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ABSTRACT

This proceedings contains edited transcripts of speeches and workshops given at a conference on the Indian Child Welfare Act (ICWA), held at UCLA in January 1992. Workshop titles were: fetal alcohol syndrome; responding to the family in Indian child welfare; joint in-service training for management of Indian Child Welfare Act cases; domestic violence in the American Indian community; funding programs and grant writing; critical incidents: taking care of yourself; Indian child adoptions; developing tribal courts; cultural competency; difficult casework; ICWA compliance procedures; more difficult casework; Public Law 280; surviving the courtroom; and fetal alcohol syndrome: identification, treatment, and prevention for mother and child. Keynote addresses were given by Cecilia Fire Thunder, Dan Edwards, and William Thorne. An annotated bibliography on Indian child welfare and the ICWA contains 56 entries published 1972-91. (SV)

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THE INDIAN CHILD WELFARE ACT:

Unto the Seventh Generation

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CONFERENCE PROCEEDINGS

Edited by Troy R. Johnson

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THE INDIAN CHILD WELFARE ACT

Unto the Seventh Generation

Edited by Troy R. Johnson

Conference held at UCLA Faculty Center
January 15–17, 1992

NATIONAL CONFERENCE PROCEEDINGS SERIES NO. 2

Editor: **Troy R. Johnson**

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DEDICATION

This publication is dedicated to the memory of

Hannah Left Hand Bull Fixico
Rosebud Sioux - St. Francis, South Dakota

Hannah left this sacred earth and entered into the Spirit World on August 17, 1992. For those of us who knew Hannah, her loss is felt deeply; however, our lives have been enriched greatly for having traveled a few miles alongside such a warm and loving person. It is fitting that this book on the protection of Indian children should be dedicated to Hannah because she felt that we should all humble ourselves as children and put aside our differences for the betterment of all people.

ACKNOWLEDGMENTS

The success of the Second Annual National Conference ***The Indian Child Welfare Act: Unto the Seventh Generation*** was the result of the work of a team of dedicated professionals. I would like to thank the following people for their assistance in conference planning and in obtaining speakers and facilitators: Ms. Rose-Margaret Orrantia, Mrs. Kathy Deserly, Mr. William Salinas, Mr. Kevin Sanders, and Ms. Kathy Bridgeland. Financial support for the conference was provided by the Indian Child and Family Services, Inc., Escondido, California; Indian Child and Family Services, Inc., Los Angeles; the Toiyabe Indian Health Project, and the Bureau of Indian Affairs, Sacramento, California, office. The evening reception was sponsored by the American Indian Alumni Association, and the conference art work was painted by Mr. Earl Sisto. Particular thanks goes to the University of California, Los Angeles, American Indian Studies Center, which provided financial assistance, clerical support, and student assistance for the conference. Transportation to and from the conference site was provided by the UCLA American Indian Studies Association. Ms. Blanca Jensen deserves special recognition for her work as my Coordinating Assistant. Ms. Carole Marie Gentry is deserving of special recognition for her editing of the conference proceedings and preparing the manuscript for publication.

The publication of the proceedings was funded by a grant from the Haynes Foundation, Los Angeles, California. I thank them for their interest in and support of this project.

Troy R. Johnson
Editor
Conference Coordinator

INTRODUCTION

Before this country was a nation, the precedent was set, under the guise of "civilizing" and "educating" the Indian, to destroy Indian culture and tribal integrity. This was to be done by removing Indian children from their family and tribal settings and sending them to distant boarding schools. Today, as we begin the second annual Indian Child Welfare Conference: *Unto the Seventh Generation*, the widespread separation of Indian children from their homes continues. In spite of the enactment of the Indian Child Welfare Act (ICWA) in 1978, 20 to 30 percent of Indian children are still being placed outside of their natural tribal and family environments, primarily in non-Indian foster care and out-of-culture adoptions. Research indicates that these children suffer extraordinary trauma. Indian children placed in non-Indian homes experience unusually high suicide rates, 70 per 100,000. This is four times higher than the rate for the United Stages general population. The incident rate of alcoholism, drug abuse, and illness from sexually transmitted disease among this population has yet to be determined; however, Indian tribes, mental health professionals, and legal advocates indicate a disproportionately high rate of incidence. The long-term effect for many of these children may well be disastrous. Reunification with their Indian culture is the answer and very possibly the only cure.

Prior to enactment of the ICWA, cases involving custody of Indian children were resolved within the general framework of Indian law principles governing civil jurisdiction, that is, when all contacts were within Indian country, tribal jurisdiction was exclusive; when the majority of contact was within non-Indian country, state jurisdiction was exclusive. This dominance of judge-made principle and decision-making was altered by the passage of the ICWA which recognizes that Indian tribes, as sovereign governments, have a vital interest in any decision as to whether Indian children should be separated from their families. The Act removes sole authority for the protection of Indian children and the delivery of child welfare services from the state; re-establishes tribal authority to accept or reject jurisdiction over Indian children living off-reservation; and requires state courts and public child welfare agencies to follow specific legal and procedural requirements when considering foster or adoptive placement of Indian children.

This conference brings together some of the leading members of the national Indian community to discuss ways to better implement the ICWA, as well as ways to assist those who have been abused by the system. It is not enough to recognize that Indian children are at risk. Indian people must now take the lead in pushing for compliance procedures, reporting procedures, and the licensing of Indian foster homes in which to place young Indians without families. Indian people must educate themselves, to arm themselves with the technology of the non-Indian judicial and social welfare systems of this country which rob Indian people of the hope of future generations. It is not enough to say that there is an Indian Child Welfare Act designed to protect Indian children. The Act is being ignored in many, many instances. More Indian children are being placed outside Indian families today than during the years preceding passage of the ICWA.

The title of this conference, *Unto the Seventh Generation*, was not arrived at by accident, or adopted lightly. If Indian people are to survive as a distinct community, the vision for the future must extend beyond this generation, and the next, and truly unto the seventh generation. The actions taken today, when an Indian child appears in a court-room for foster or adoptive placement, will impact subsequent children. We must plan now for the future. It was with these thoughts and this guiding force that the organizers of this conference felt an urgency to bring together a national audience and national experts to address what has gone wrong in the past, and point the way to the future.

The proceedings of the Indian Child Welfare Act Conference *Unto the Seventh Generation* bring to you some of the strongest and most experienced voices advocating for the rights of Indian children. Included as well are presentations on Public Law 280, Fetal Alcohol Syndrome, Tribal Court Practices, and Cultural Sensitivity. One workshop on Fetal Alcohol Syndrome from the first annual Indian Child Welfare conference is printed here for the first time. Additionally, I have provided an annotated bibliography on the Indian Child Welfare Act for those interested in more in-depth research on the subject. I hope the conference is helpful to you and that this book provides you with reference material for the future.

Troy R. Johnson
Editor

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OPENING CEREMONIES

(Wednesday, January 15, 1992)

Kevin Sanders: I know a lot of you are anxious to hear our speakers. We are very fortunate to have what I consider a very professional, knowledgeable, and timely group of speakers over the next three days to speak with you about Indian Child Welfare. I've had several questions this morning about what exactly the title of the conference means, and I'd like to start the proceedings by giving you some thoughts about this particular topic. It's called *"Unto the Seventh Generation."* That is a progressive conceptual philosophy which has been used by American Indian people to describe the idea that all of our thoughts and actions will affect people seven generations into the future. I know, as I've thought about what that means, it really puts an awesome responsibility on all of our shoulders to live better lives, to think better thoughts, to be more positive, to be more creative in our attitude towards life, our families, and the future of our generation, particularly in the American Indian world. So with that explanation, I think perhaps that sets the tone for the conference really well. I think that it is a good concept to try and live by.

At this point, I'd like to begin the proceedings with a traditional invocation. It will be given to us by a member of the Rosebud reservation, a Lakota Sioux, from South Dakota. She's also an instructor here at the University of California at Los Angeles. She teaches linguistics, and in particular, the Lakota language to students here at UCLA. She lives in Bell Gardens, in the Los Angeles area, and I would like to bring her up now to give us the invocation, Hannah Left Hand Bull Fixico.

Hannah Left Hand Bull Fixico: This is an honor to be here. I've always considered it to be an honor when they ask me. I'm honored, so let us all stand and bow our heads. I'll first pray in Lakota, my language. *(Prayer is given in Lakota).*

Grandfather, in heaven, have mercy on us, and give us the knowledge that we will go forth from here on in the straight road. Father, our heavenly father, we ask for you a blessing this day. You have given us a good day, we ask for a blessing that with this meeting, to protect our Indian children, and to keep them from whatever is, protect them from whatever is not right for them. We as traditional Indian women, men and women, we protect our children. We knew many years ago that we were supposed to protect our children, no abuse was known. So keep them that way, grandfather, and let these young men and women have their meetings and whatever they have decided to do, give them the knowledge and strength, thank you. Amen.

Kevin Sanders: Welcome, my name is Kevin Sanders. I'm the moderator for today's session. I'm employed by the Bureau of Indian Affairs (BIA) in the Sacramento, California area office, which is the regional office of our agency. We're a regional office, one of twelve regions, and our particular office serves the State of California, the tribal people and tribal organizations that reside therein.

Speaking of which, to follow up with our conference theme and topic to remind all of us where we've come from, where we are, and where we're going, I'd like to take a moment to thank those native people whose land we're standing on today, because it was their land originally. To continue our presentation this morning, we have some people to introduce to you who will welcome us to Los Angeles, California, and welcome us to the University of California at Los Angeles. The first person to introduce to you this morning is Roxanne Burgess. She's the American Indian Community liaison from Mayor Tom Bradley's office in Los Angeles.

Roxanne Burgess: Thank you Kevin. Well you know I'm not nearly tall enough or I'm certainly not as wise or as wonderful as Mayor Tom Bradley, but like him I have a warm spot in my heart for Indian child welfare. So I welcome all of you to the wonderful city of Los Angeles, which has so many different American Indian people living here. The mayor, as you remember, if you were here last year, was able to come and welcome you. I was a new employee of his at the time, and I was really pleased with what he had to say to you. He really wanted to be here this year. I kept asking and trying to see if he was going to be here today, and finally last week, he knew that he had to be out-of-town. He is in Washington, D.C. today, so he is not able to be with us. However, I am here to welcome you on his behalf.

When I first came to Los Angeles, and it's been almost ten years ago now, I went to work at Indian Center Incorporated, and my first job was with the Indian Child Welfare Project there. Kathy Bridgeland, had just been hired as the new director, and as many of you have also experienced, she didn't have an office yet. So, we sat in the corner of somebody's office that was on vacation, and she interviewed me and I was hired. We scrounged around and found a space that we thought would be good for us. We then went around to different offices, and we'd say, "You don't want that desk do you, or that chair, or that bookcase?" We'd quickly whisk it off to our office. So, we got some furniture, we got started, and I know that's probably happened with a lot of you across the country. You started out with not too much, but during the past ten years that has certainly changed. The offices here are very nice now, and the program has expanded and like yours, I'm sure you've seen many improvements over the years.

In L.A.. we now have an American Indian unit, which handles all the Indian child welfare cases in the Department of Children's Services. Just last weekend, I was in Tempe, Arizona, and I was eating lunch in a meeting (*it was a church meeting*), and mentioned that I was from Los Angeles. A woman said, "Oh, you know what, in Los Angeles they have only two judges who do all of the Indian child welfare cases." She was really impressed how great that was. So, the Indian child welfare family I know is a good one, and wherever you go, it seems you meet someone that is in Indian child welfare, and working hard in that field.

I managed to get Kathy Bridgeland up to my reservation for Christmas. We went to the grocery store (that's, you know, the big thing to do, run to the grocery store), and guess who we saw when we first got there, Marian Moody, the Indian child welfare director up there. So, it is really good to be a part of the Indian child welfare family.

I only worked for Indian child welfare for a year, but I've kept close tabs on programs across the United States in the past ten years. When I was working for the Presbyterian Church three or four years ago, I was able to spread the word in Los Angeles that there are in fact American Indian people living here. I took it upon myself to let them know that there are Indian families here, there are Indian children here that can use those things they were making, and they are now giving some of those things to Indian people here. I think that's a concern of mine, that many times if it seems that we're put at odds with each other, Indian people on reservations and Indian people in urban areas. We are all Indian people no matter where we live. I think in this community and in Indian child welfare, we really need to continue to work to support each other, and no matter where we reside, to work together to do the best for our children, whether they live here or they live on a reservation.

As you see, Troy has arranged very good weather for you, especially since I heard on the news last night that it was 71 degrees below in Minnesota somewhere. That is 140 degrees different than here yesterday. So, if you are from there, I'm sure you must be glad to be here today. Enjoy yourself while you're in the Los Angeles area. I know that nine million people, when you come from a small urban, small reservation like I did, is mind boggling. There are a lot of Indian people here and I hope that you run into some of them and they make you feel welcome here. Thank you.

Kevin Sanders: Next, I'd like to introduce our next speaker to welcome us to California, the area director of the BIA, a member of the Cheyenne River Sioux tribe, please welcome Mr. Ron Jaeger.

Ron Jaeger: Thank you, Kevin. As Kevin indicated, I am the area director of the BIA in California. As such, we work with 97 federally recognized tribes in California. We have more federally recognized tribal groups in California than any other state. A lot of folks don't know that we basically have the largest Indian population in the United States. According to the 1990 census, maybe Oklahoma is close. As Kevin indicated, we have agency offices throughout the state of California: Riverside, Redding, Sacramento, a field office in Klamath, and an office in Palm Springs. I've been with the BIA for 23 years. I've worked in the Dakotas where I was born and raised, Arizona, and also spent some time in Utah. I then came to California about nine years ago, not knowing anything about California. Nine years later, I'm still here. I've really enjoyed working for the Indian people and Indian tribal governments in California.

I was here a year ago for the first conference to welcome those people. I'm pleased to have been asked to welcome you to the second conference. One of the things I've been asked to do in welcoming you is to acknowledge some of the people and organizations who are responsible for this conference, as well as the Indian Child Welfare programs in the State of California. First, I'd like to recognize the Regents of the University of California here at Los Angeles, Chancellor Albert Barber. As I do this, I would like for the individuals representing the organizations that we talk about to actually stand so that you can be properly acknowledged. The Department of American Indian Studies, Dr. Duane Champagne, director. I'd like to acknowledge the California Department of Social Services through the County Child Welfare Agencies. I'm sorry I don't have your names, I'd appreciate you're standing.

I'd also like to recognize the following fiscal year 1991 Indian Child Welfare program projects that are ongoing. I'd like to recognize the Indian Child and Family Services, a tribal consortium in Temecula, California, and their executive director, William Solinas. I'd like to recognize the Southern California Indian Child and Family services here in Los Angeles and their director, Kathy Bridgeland. The Tolyabe Indian Tribe Welfare Project in Bishop, California and their director, David Lent. And the Southern California Indian Center here in Los Angeles, John Castillo, executive director. The Oakland project, Ann Alton. Representatives of the Oakland project. Other Indian Child Welfare Project representatives include SusanVille, Rancheria Project, the Modoc-Alturas Rancheria, and the Hoopa-Reservation Project.

In addition to those organizations, there are some individuals I'd like to have you recognize, they are the people who really work behind the scenes arranging a conference such as this, arranging for speakers, taking care of accommodations, travel, etc. First, I'd like to acknowledge Troy Johnson, who is here at the American Indian Studies Center, where he is a Ph.D. candidate, and the conference coordinator. I'd like to recognize Blanca Jensen, who is here with the American Indian Studies at UCLA, she is a staff assistant and an assistant conference coordinator. I'd like to recognize the UCLA American Indian Studies Alumni Association. The Alumni Association will be hosting a reception Thursday evening. I'd like to recognize Rose Margaret Orrantia, the Indian Child Welfare consultant from Escondido, California. And I'd like to recognize Kathy Deserly, assistant director, Indian Child and Family Services in Temecula, California. Last, but not least, certainly, I'd like to recognize Mr. Kevin Sanders of the BIA office in Sacramento, where he functions as the area social services officer and coordinates our Indian Child Welfare effort. Kevin came to us in 1989 or so from Washington, D.C. and whatever progress we have made as the BIA in California, can be attributed directly to Kevin. I really appreciate the work that he does and the effort that he puts in getting all of us together. Kevin, has an assistant now, and I want to introduce her. This is her first conference, Lenora Campbell.

Again, I want to welcome you to the Second Annual ICWA Conference. I was of thinking about what to say this morning as part of welcoming you and getting this conference under way. I was looking at the agenda, and on the first page there, I'd like to read the first paragraph, which talks about what we did. I think Troy Johnson wrote this and I think it serves as the most significant event that has happened as a result of our conference last year. As a result of the 1990 Indian Child Welfare Conference, Indian homes for Indian children, the juvenile court procedures in L.A. and San Diego counties were changed, so that all children entering the placement system are screened for Indian ancestry and those children with Indian ancestry have their cases heard in one of two court rooms, where the judge and all of the court personnel are trained in the procedures and requirements of the ICWA. In the past, these cases were heard in any one of twenty plus court rooms and as the conference highlighted, those court room personnel had little, if any, ICWA training. Positive results such as these are a mark of a successful conference.

So, with that in mind there remains much to be done. This symposium is representative of another year's planning and research of the combined efforts of all those people, organizations, and agencies that I've just mentioned. It brings a unique gathering of federal, state, private and tribal interests together in California to discuss Public Law 95-608, the Indian Child Welfare Act. We need to learn more about all of our roles in the implementation of this Act. The Department of the Interior, through the BIA, is keenly interested in this process and the results of the work between the tribal, state, county, and private agencies involved in the placement of Indian children in temporary and permanent homes. The BIA recognizes the difficulty encountered in the verification of tribal membership due to the variety of tribal laws, tribal constitutions, membership ordinances, and in some cases a lack of those governing documents. We pledge to do the best that we can to help you resolve these issues given the limitations that we work under, including the Indian Reorganization Act of 1934 and Public Law 93-638, the Self-Determination Act.

A lot of folks who are not familiar with Indian affairs think that the United States government or the BIA itself determines who are Indians and who are members of tribes. That is simply not the case. Tribes, tribal governments decide who their members are. Tribal governments determine what their membership criteria is, the United States government does not do that. We work closely with tribes, helping to develop these ordinances dealing with membership and enrollment and tribal membership. Tribes must realize that they have a responsibility to assist in the identification of these children as Indians since the ICWA sought to reaffirm tribal jurisdiction over child welfare matters. Re-establishment of tribal authority and reduction of the number of Indian children being placed in non-Indian temporary care and permanent adoptive settings *must* take place. Tribal governments must take the responsibility to educate their members and take the responsibility for placing their children appropriately. We need to have more diligence on the part of the public welfare agencies and court systems to properly identify Indian children, coupled with tribes and the BIA, responding in a timely manner to bring about more appropriate dispositions for both temporary and permanent placement processes.

In light of the recent budget cuts taken here in the State of California, thereby reducing child welfare and child protection services, a joint planning effort between the Department of the Interior, the BIA, the State of California Department of Social Services and tribes can bring about a supplemental service delivery system for the Indian population by identifying where the gaps are in our service delivery and by requesting BIA social services funding increases for California. Until 1989, the BIA did not receive any social service dollars. Our first effort was to get Mr. Sanders on board, get his office staffed. Through Mr. Sanders we have steadily increased our funding in California for social services programs. Traditionally, in California, that has been the responsibility of the State of California. The BIA does not receive funding for programs like General Assistance or Foster Care Payments in California. That is something that we're trying to change the thinking of the people in Washington, our Central Office and Congress. We have made some progress and again, Mr. Sanders has been most involved in that effort. So, in keeping with the government to government relationship between the United States and sovereign Indian tribes, I challenge all of us to use this special event, this Conference, to focus on the solutions to these perplexing problems, to get to know each other better, and deepen our understanding of American Indian culture, and families that have been singled out by this special legislation. We need to make a lot more progress, and I think that through this conference, we can begin to move forward and help Indian people. Thank you very much.

Kevin Sanders: The keynote address this morning will be given to us by an individual who is becoming more and more well-known nationally and perhaps internationally after this conference. I had the chance to hear her speak in Billings, Montana last summer at a BIA sponsored social services function. She was very well received, and in fact was so popular that the planning committee could not possibly conceive of having a conference without having her here with us today. We're very fortunate to have her here. She's a very busy individual and we're pleased that she made time to be with us. She's a member of the Oglala Sioux tribe, and is very knowledgeable about the topic that we're going to hear about this morning. Please welcome Cecilia Fire Thunder.

Cecilia Fire Thunder: Good morning. I want to play first this morning. How many of you woke up early this morning and didn't know where you were? Did you wake up in a strange hotel room and did you say to yourself, "Oh no, I'm reverting back to my old unhealthy behavior?" Ah, ha. Everybody stand up. Put all your papers down.

Okay, we're going to play a little game here this morning. I think it's time for us. How many of you know each other? Look around. Okay, for the next five minutes I want you to go up to somebody shake their hand, and introduce yourself. I want you to turn around and look at the person next to you and say you're looking good. All right, one, two, three, looking good.

In the last two years, I've had the pleasure of working with wonderful people across this nation, other brothers and sisters of many different Indian nations and Indian tribes. We're convinced that through this conference, *Unto the Seventh Generation*, and the work that we're doing, that we're going to make some significant changes in Indian Country, in terms of the total Indian communities and what we have to do.

Let me begin by greeting you in my language *(Lakota)*. In my community, before we talk to our people, we honor you, and show respect for you. My relatives, I greet you with a warm handshake. How many of you come from Indian communities, even though you've seen somebody the day before, you still shake hands. Yeah, you still shake hands. And guess what else we do? We hug. How many hug more since you've become healthier? We're hugging more in Indian Country, and it doesn't mean I'm trying to snag you, it means I want to feel you as a human being. I want to connect with you, I want your energy. I want to give you some of mine. Especially, the kind of work we do in our community, we need to energize each other don't we? We need to say good things to one another don't we? We need to go beyond shaking hands, don't we? We need to let each other know that we care about each other now that we're hugging more and it's wonderful! We're not doing A-frame hugs anymore. We're giving good full body hugs, we're really feeling each other as human beings. It's nice to know that you can hug another person in your community. And it's even nicer to know you can hug men, and men can hug women, and as Indian people, we can hug each other. I remember a time when I was a little kid growing up on my reservation, there used to be a lot of hugging and touching. How many of you remember that? Now, we don't see a lot of it. But in the last few years, we're starting to see more of it.

I want to talk a little bit about my journey and my life. I lived in Los Angeles for thirteen years. I had to sit down and calculate it. As I get older and wiser, I'm also getting wider. I tell people part of our journey as Indian people is to become balanced and in harmony. When we say in balance and harmony, we want to talk about our physical, our spiritual, and our emotional well-being. When those are in balance, your in harmony, right? And that's where we want to be. I tell my friends, "Well I said, I'm going to be in total balance because my waistline and my age are getting closer together!"

It's an honor to be here on this campus. It's an honor to be back in Los Angeles where I spent many years. I came here in 1963 through a relocation program. We came here, my four sisters and myself, and my parents. We came from the Pine Ridge reservation where I was born and raised. We came to L.A. because my father wanted us to have a chance at getting something out of life, and maybe have a better opportunity. Some of my friends asked me this morning why I cut my hair. I'm in mourning, I just lost my father, and he died *here* in L.A. We took him home.

I'm 45 years old, and today I appreciate my mom and my dad even more so. When I went home to Pine Ridge five years ago, I realized something very important. As an advocate for Indian children, I realized how fortunate I was to have had a mommy and a daddy. It's not a mother and a father—a mommy and a daddy—a mommy and a daddy mean something different than a mother and a father. A mommy and a daddy is closeness, it's bonding, it's nurturing, it's loving, it's safety, it's security, it's unconditional, isn't it?

You and I work with children who will never have a mommy and a daddy, right? They'll never have what we have, the safety, the security, it makes it hard for us. I admire and respect each and every one of you who work in the field. Because it's hard, isn't it? It's hard, because you have to deal with so much ugliness, and so much pain. And then you have to let these children go, you have to let them go because they have to go someplace else. You don't know what is in store for that child that was in your circle for a very brief time, as a social welfare worker, that you got to love. How many of you have loved the kids that you worked with, that you hated to let them go? How many times have you laid awake at night and wondered, "I wonder if that beautiful little Indian child that was in my circle for a very brief time is somewhere safe?" How many of you wondered about that? If that child is safe? If it's being loved and cared for, if somebody is taking good care of him or her. So many children come through our lives that way, don't they? We wonder if they're okay. As I get older, I truly appreciate my mommy and my daddy. Because I now know that there are lots of Indian children out there who aren't going to have a mommy and a daddy. That hurts me a lot.

I came here in 1963, and I left in 1976. I grew up here, literally. I moved to L.A. when I was 17, and I then left and moved to San Diego. I spent 24 years in California. Thirteen years in L.A., and there are times when I come to L.A. and I go down to Main Street. How many of you know where Main Street is, where all the Indian bars are? Driving through Main Street, I thank the great spirits for giving me something else that made me look beyond enabling me to get myself off of Main Street. There are many of our relatives who are still down on Main Street that are still searching and looking, aren't there? For many of us, I like to go back down there and be appreciative of where I'm at. Because I could have been down on Main Street. I could have stayed on Main Street in L.A.

I went home to Pine Ridge in 1987 after learning many things. I went home and I began to organize my community on child advocacy, for families, to get some things done in my community around the pain of violence. From 1985 to 1987, I had the pleasure of sitting on the Indian Child Welfare Consortium for Riverside and San Diego counties. I worked for Kathy Deserly, and Margaret Orrantia worked with them on Indian child welfare issues.

Today, I work for my tribe. I'm a health planner and I wear many hats. But the biggest hat I wear is trying to do some things to make my community a healthy place to live in, to address all the violence, all the abuses, all the pain, and to take a good look at alcohol. My responsibilities include, looking at the local issues, at the regional issues, at the national issues. The national issues require looking at legislation, looking at policy. Sometimes it's really difficult working for your tribe, because our tribal leaders sometimes do not consider children's health and welfare as a priority. They don't consider it a priority, and I have not ever seen or heard about a tribe that put the welfare of their children above everything else. How many of you have ever seen that? I haven't seen it yet, but I'm going to make sure my tribe makes children the priority because I'm running for the presidency of my tribe.

I'll throw in a little campaign speech here, right now. There are five of us. I ran two years ago, and I got the third highest vote from a field of eight candidates. I was the only woman running. This year there are two women running, we have five candidate. I have campaign committees. I'm acting like a white person.

Earlier, I was telling my friends that I have two campaign committees. I've got a campaign committee for full-bloods and a campaign committee for mixed-bloods. I want everybody to vote for me. I'm talking about the real issues. Anyway my campaign committees are out there beating the bushes so I get to come and talk to you.

Anyway, on to Seventh Generation issues. Next year in this country, is the 500th anniversary of the year the white man got lost; Christopher Columbus. We, that is, my colleagues and I, have been going across Indian Country asking Indian tribes and communities to stop for one year and take a good look at where we have been as Indian nations and as Indian tribes. We are asking people to stop and take a good look in all disciplines and see where we came from in terms of Indian child welfare. Where we came from in terms of education.

Look at all the disciplines in our communities and take a look at the impact of the last 500 years in each particular area. Do any of you know what we are finding? We are starting to get a better sense of why. Too often we Indian people do not even have an opportunity to sit back and analyze, do we? We are involved in the kind of work that is crisis oriented, right? When do you sit down and plan for Indian child welfare? How many tribes sit down and plan for the welfare of Indian children? How many tribes can really tell you right now what the current status of Indian children's health is, physically, emotionally, spiritually, mentally? I bet you not too many tribes can tell you that.

Because of the kind of work that we do, we never really get a chance to sit down and look at where we have been. We never get a chance to look at why we are where we are. Because all we do is rubber Band-Aid, day after day, after day. We never have taken the time to open that wound and probe deep down inside and start the healing process from the bottom where it initiates. All we do is put scabs over these big wounds, or put on Band-Aids. We never really take the time to take that wound and clean it out, it is like having a festering wound. You know how it kind of scabs up and the pus is still inside? That is how I look at Indian societies today. We just keep putting more dollars over a big wound never really allowing it to have a chance to heal. The people who can pull that scab back and get the pus out, the sickness, the illness, the things that hurt us are us, are Indian people themselves.

We are the *only* people who can change where we are. We are the only ones who are going to pull that scab back and take the infection out, so that the wound can heal and we can be strong, healthy nations again. We are the only ones who can do that. The only way we are gong to do that is to take a good look at where we have been as Indian people. In my language we say children are sacred. However, statistically, children in our societies are not treated in a very sacred way, are they?

Child abuse is out of control in Indian communities, isn't it? What about sexual abuse and the use of children for sex by adults? It is there, isn't it? We are seeing more and more abuse reports because we are taking child sexual abuse and the shame of having sex with a child out of the closet and on to the table tops.

On my reservation, we talk about child sexual abuse on the radio. How many of you speak your language? How many of you, in your language, can describe child sexual abuse in one word? You cannot. There are many things that are wrong in our societies that our Indian languages do not have words for.

In the English language you can say child sexual abuse and what do you see? Immediately, you can see all these images? Right? In our language, in the Lakota language, we do not have one word for child sexual abuse. So what do we have to do? We have to describe it.

What is child sexual abuse? How do you describe it in the Lakota language? You talk about anuses. You talk about penises. You talk about an adult-sized penis going into the vagina of a five-year-old girl. You have to be very descriptive.

How many people are healthy enough to even talk about body parts, let alone talk about body parts in relationship to adults and children over the radio to 20,000 listeners? You have got to be damn healthy to talk about those subjects, right? Yes, and it is not only being healthy enough to talk about these subjects, but you have got to care. You have got to care enough to take the risk to talk about it.

The first time I did it, my friends sat there like this. They were literally comforting themselves, because as I described it, they could image it, they could see it. The way we are going to reach the hearts of our people is to get them to care, you have to feel it. How many of you act because you feel? How many of you act because you hurt? How many of you act because it makes you mad? We have got to make our people mad. We have to get our community people to cry. We have to get them to feel before they can do something about the pain that our children are facing.

The work we are doing is difficult, but we have to do it because this is the seventh generation. We want this to end. We want the next seven generations to be generations of healing and of recovery. We want harmony in our community. We want our children to have a safe place. We want our children to go to bed at night knowing that mommy and daddy are out there. They will not let the bogeyman in, right? We want mommy and daddy, somebody there, so these children can go to bed and feel safe and secure.

Children's advocacy is a nice term. Children's advocacy means you are looking out for the welfare of children, physically, emotionally, spiritually, and mentally. Children's advocacy means that you have to create a place in your community for these children to come home to. Children's advocacy means that you have to impact change. You have to change legislation. You have to get out there, beat the bushes to get people to respond to children's needs. You have to knock on doors. You get doors slammed in your face. But the greatest role in the advocacy of Indian children is how we get our Indian communities to become healthier for our children.

When I look at children's advocacy, I do not look at a child with problems, I see a family with problems. What I have seen of children's advocacy it is not enough to take a little child and try to make life better for that child. What about where that child came from? What about mom? What about the parents? What about all of the families? The reality of Indian communities, of Indian families, is that we are completely dysfunctional. We are talking three to four generations of alcoholism that has completely torn down the value system in our families, right?

We are talking about all kinds of things that are wrong, and yet we give it lip service. Our leaders, many of them are good leaders, talk about how we have to preserve the land. How we have to preserve water. How we have to protect these treaties. I always ask them, what about the children?

In 1990, at the National Congress of American Indians (NCAI) Conference, we passed a resolution that addressed that very issue. I could not sit there and in good faith support year after year, upholding treaties and land rights, water rights and we are not giving our children's welfare the same energy and commitment.

We passed a resolution in 1990, and what that resolution basically said was that children are our most natural resources. We have to do something to protect our most natural resources. Our most natural resources are not water, land, or treaties. It is those little kids that are growing up as Indian children. What do we do to protect them? What do we do as tribes? What do we do as communities? What do we do as leaders? What do we do as nations to provide a better place for our children? This is what we have to consider.

My portion of writing that resolution was that, I said, "We spent hours, months, years talking about treaties and how we have to protect them, yet we do not even spend a small percentage of that time discussing how we are going to protect our children." So in the resolution, we basically said that our most natural resource is our children. As leaders and as tribes, we need to spend as much time sitting down and figuring out how we are going to protect our children and how to best provide for them.

I was an urban Indian for 24 years. I lived in L.A., then I moved to San Diego, then I went home. I was born and raised on a ranch, came to L.A. and San Diego. I have been back home on my reservation for five years.

For approximately the last five years, my community has not had an ICWA Program. My colleagues and myself, people in the community, sat down and we wrote our ICWA proposal and received funding. The tribe did not write it, the community wrote the grant. We included law enforcement, the courts, the college, people from the tribe. We sat down as a group and we looked at the Request for Proposal (RFP). We divided it amongst everyone. Everybody went out there and beat the bushes, got the data, brought it back and we wrote a great grant and received funding. And, the community wrote it. In the last year, we have made numerous efforts as a community to write grants pertaining to children. That is community empowerment.

I come from a community, listen to this, we have 20,000 Lakotas on the Pine Ridge Reservation. Seventy-three hundred of those Lakotas are ages 16 years and under. We have a birth rate of 300 children a year. We have a very young population, but this is not unusual. Many of you come from communities with that same number. We have a large, young population, thus we have a very high birth rate.

I also talk about sexually transmitted diseases (STDs) and AIDS and all kinds of stuff on the radio. I have a regular health show in my language. And you know who validates me? The older people, the Lakota speakers. They like the information I give them. It is the people my age who are still sick, who do not want to talk about penises, vaginas, stuff like that. The older people understand it. And so they come and they say, "GEEZ, my girl, I really know now what AIDS is, I know what STDs are."

On one of my shows, I said, "You know when you look at teenage pregnancy rates, STDs rates, what does that tell me?" It means that the young people of my community are having sex more often with more people than you and I could ever fantasize about. Let us laugh about that because it is true, is it not? Teenage pregnancy is outrageous, is it not? And our young, beautiful, Indian girls are having babies at a much younger age, are they not? How many of you know about 12-, 13-, 14-, and 15-year olds having babies? Our young girls are having babies at a younger age, so we need to know why.

When you look at the entire structure of our Indian communities and tribes, there is a tremendous breakdown in values, family and community. These are the realities that we have to face. When we deal with one person in that family, you are not going to take care of that family. We have to start looking at the whole family and not just one person in that family.

How many of you have worked in alcohol treatment? Sometimes we send people away to treatment, we send them all over the place. Thirty, sixty, ninety, one hundred-twenty-day treatment programs. What do I hear in my community, "Oh, my poor son or my poor daughter, we sent them away to treatment. We are going to send them to Timbuktu. I do not know what they are going to do, but they are going to fix him or her, right?"

Little do they realize the fixing needs to be right there in their own family. The fixing needs to come from them as moms and dads, as grandmas and grandpas. That little kid we sent away, or that member of that family we sent away, is just one part of the whole problem. Yet in our communities, we assume when we send somebody away that they are going to fix them and that they will come back whole, right? As community leaders we need to talk about that and that is what some of us do.

Now, I am going to talk a little bit about the other end of Indian child welfare, at our end, at the tribal end. When we wrote this grant, we put into this program many things that we had encountered in working with other Indian child welfare programs. Usually at this end, and yes, L.A. has a very large Indian population. Los Angeles was a place where they sent us to get lost.

See, when they relocated us to L.A., they assumed we were going to become acculturated, assimilated, marry other people from other nationalities and disappear. That did not happen. Guess what? We found each other. Indians have this unusual antenna. We know where to find each other and guess where we found each other? In Indian bars.

That is right. Indian bars. You can find them in any major city. When you go to an Indian bar and somebody says, "Hey, what is your name?" You tell them your name. They say, "What tribe are you?" No one ever asks you where you are from. They will say, "What tribe are you?" If you say, "I am a Sioux," they say, "Hey, I know somebody from Pine Ridge." So before you know it, you are connecting with somebody from your own community.

On my end, one of the things that concerned us was that the Act itself is a piece of legislation. It's a legal document that at the other end of the spectrum is that the people with the kids are human beings, aren't they? Those little kids, those human beings are removed from homes because there were problems in that home, right? There was drinking, there was violence, there were abuses, there was sexual abuse. These kids were removed because there was pain, obviously. Many times when these kids are removed and when they're brought back, we get them back with no clothes, just what they have on their backs. Just because we get a little warm body back from California, that doesn't mean everything is okay. Because we've got to undo the damage of that little child. We need to know where that child has been. We need to know what experiences this child has had. We need to hear from the social workers, the police. We need to get a better sense of where this child has been, because you know the Act itself says that these children are to be brought back to our communities and our tribes, but says nothing of the pain that they bring back.

It's wonderful when you can successfully get a child back to their tribe. The real work begins when we get them home, because we have to expunge the damage of many years. Our communities and our families have homes; love is not enough. My granddaughter coming back from California or my grandson being brought back from San Jose is not enough. Once the honeymoon period ends, we experience a whole host of other problems. The children are acting out. Many times the older children don't want to be home. They don't want to come back to Pine Ridge. They like hanging out in San Jose, L.A., or Compton. If they are thirteen or fourteen, their social life has already been established in the environment where they came from. So, taking a thirteen-year-old kid who grew up in L.A. and putting him or her back on the Pine Ridge Reservation is like trying to put a kid on the moon, right? We need to consider all of these things. But the most important thing that we need to consider as a child advocate, as a person who has an understanding of the pain that we carry around as Indian people—I start to realize more and more—I encourage you when you send children home to get as much information about that child to help us at the other end. We need half-way houses. In fact, the trend that I was thinking about was that we need a debriefing period from the time a child is brought home and placed with a family. We need these kids analyzed and we need a complete physical done on them. We need complete psychological analyses done on them. We need therapists on the staff and on the team, to immediately begin working with that child to debrief them and to begin removing some of the damage they're carrying around.

Alice Miller, in her book, and I do read Alice Miller a lot; she helps me understand my own recovery as a violent person. She made me understand some very important things, including addressing my own problems associated with alcohol. How many of you think alcohol is a problem? It's not a problem, we're the problem. In my community, it's all that crap, excuse my English, we're carrying around, that makes us drink. The more we look at the pain in my community, I'm starting to understand that this stuff that we're carrying around, we pick it up from the time we came into the world, huh? Every experience that we've had. We're carrying around a lot of damage inside of us that makes us want to drink and forget the pain, to numb it. Yesterday I heard it and I'm going to say it again. We can no longer say treatment center, we need to start talking about recovery and healing. Those are much nicer words. Treatment is necessary to fix something that is broken. Healing and recovery means fixing myself, understanding why I hurt.

So, when these kids are brought back from L.A., San Jose, wherever, back to our communities, they're carrying and bringing back with them a lot of pain. We need to find a way to get these kids on their way to their own healing. Placing a child in grandma's house or an aunt and uncle's house, our job is not done; it's just beginning. Our families are not ready to take these kids. But there are a lot of things at that other end. We're trying to prepare families, we're trying to get our families ready, and in our community, like many Indian communities, we don't have very many families who will take children in. How many of you have beaten the bushes for foster placement, huh? How many of you are always putting ads in the paper, working your buns off day in and day out, trying to find healthy Indian families in your community that you could place children in? How many of you do that? You don't have a very good success rates, do you? No, because there are very few families in Indian communities who are healthy and stable enough to take on the responsibility of another child.

I know my community. In every house in my community, there are two or three generations living together. We have grandmothers raising grandkids, great grandkids, nieces, and nephews. In my community, we don't have homeless people. You know what we have? Too many people living in one house. Do you have homeless on the reservation? I said, "No, we don't have homeless, we just have too many people living in one house." They're stored out all over the place. Some people, they sleep in shifts. Some people go to school, we sleep, they come home, we take off. Indian communities and my community as well as other communities that I'm familiar with, we talk about foster care, and the need to license more Indian families. That's a wonderful vision and a wonderful dream. But how do we get our Indian families healthy? It just comes down to trust? How can we trust Indian families? How can we trust our own community to take care of our kids? Well, I guess the thing that really concerns me is that it's not enough to take a child and place him or her back home to a more appropriate, least restrictive placement, if that's what the law says.

The thing that concerns me is that in order for all agencies involved in Indian child welfare issues to work effectively, we need people in every community to do monitoring. We need people out there who are making sure that all the agencies who are involved in children's welfare are doing what they're supposed to be doing. I don't know about your community, but we don't have enough help. We've got more damn problems out there than we have people trained to take care of. Many of our social workers wear two hats. Many people like myself wear twenty hats. We're dealing with therapy, we're dealing with healing. We're doing it, we're dealing with AA. We're dealing with family, law enforcement; we're working with the courts. But you know, in my community, we've got code books this thick. All of our tribal codes, and in it are some wonderful laws in terms of child protection.

Those child protection laws are useless. You know why? Nobody's enforcing them. No one is enforcing the laws in our books. What we need are more bodies out there to enforce those laws, we need warm bodies out there doing training. Turnover, is turnover a problem in Indian communities? Absolutely. Our doctors work for two years and then they leave because we overwhelm them, we have too many sick Indian people. We have fifteen positions for physicians on Pine Ridge. We have only filled seven. We've got 7,300 kids sixteen and under with a birth rate of 300 percent. Do you know how many pediatricians we have? Two. We've averaged three a year for the last three years. Do we have pediatric nurse practitioners? No. But let's look at mental health. Let's look at that other part of the ball game; we're also proficiently behind in mental health care and mental health services.

We look at our communities and we desperately need a lot of help. We desperately need communities to become empowered. Our community people are helping provide outreach out and are consequently helping other communities. What we've done is creative types of stuff. We have used our own, and this is the other part of being healthy. It's so exciting to be Indian. How many of you are excited about being an Indian? I'm really excited about being an Indian. I look at myself every day, and I say, "Boy, you're keen. Boy, you look good." Every day, I'm excited about being an Indian and the more excited I become about being an Indian, guess what happens? Other people, in my circle get excited about being Indian. Beyond that, I'm excited about being healthy. I'm excited about being alive, I'm excited about being at a time where I can make a change and I can make a difference. As long as I'm healthy, the energy I put out is going to affect other people, right? My healthy energy affects other people, and when people are around me, they can't help but get excited and energetic. So we need to do that.

Having a college degree is not enough in my community, we need you to be healthy and well-rounded like this. All the Indian women who are always fighting the bulge and getting on the scale, and saying, "Oh, no!" I've got a really nice message for you. I found in the last five years that Indian woman don't have an ounce of fat on them. You know what it is? Dough. How many of you like bread? Yes. Indian people don't have fat, we have dough. At the Wellness of Women Conference in Phoenix, they always feed us one big dinner banquet. They put that big bowl of bread in the center of the table and we usually ask the waiter to fill it up twenty times. How many of you are addicted to bread? I am, I love bread. The Indian women I hang out with, all different tribes, when we go out to eat, guess what we do? We OD on bread. That's why I'm now convinced that we don't have fat, we just have a lot of dough on our bodies.

Mr. Jaeger talked about tribal responsibility. The tribes and places where you're sending the children back to, need to begin taking a strong look at the ICWA. Looking at the courts, we look at what the courts aren't doing. However, the tribes are not doing enough. This last year, in 1990, we were able to put together a child welfare committee out of NCAI This committee was approved by resolution in 1990. This year they did a lot of work on NCAI, and they had an opportunity to sit down and talk with Dr. Brown for about an hour-and-a-half.

This week, I received a letter that included the funding formula. Preference information was being sent out to the tribes. Those of you who work for tribes should try to get a copy of that letter from BIA to review that information. What they're saying is that it's a survey to tribal government in order to help them select the funny distribution formula. Find out where that is and take a good look at it. Go home and sit down as a team and start talking about funding formulas.

The BIA and Dr. Brown have made a commitment to having a better system of consultation with tribes in terms of looking at Title II of the ICWA. There has to be a greater movement from tribal representatives and tribal leaders to sit down and work closer together with BIA in terms of Title II and Indian child welfare issues. The BIA has made a commitment to have developed a stronger working consultation with tribes so that they can get a better handle on ICWA.

The other thing that I meant to tell you is that 1992 has been declared the Year of the Indian Child. So, I encourage you to start working on issues in your community and maybe start doing some community awareness and consciousness raising in your community, and let's take a really good look at the Year of the Indian Child. This year do some really heavy duty stuff and start making a really big difference in our communities and in our tribes for our Indian children.

The BIA is also talking about developing is a BIA Social Service Advisory Committee. If you haven't already done so, talk to the tribal leaders in your community. Let's start dialoguing and see if we can't get some hard working, dedicated, assertive people on these committees. We have lots of committees with unassertive people, and a lot of people just go to meetings and sit there. I'm going to tribal council meetings in my community, and after tribal council meetings I go to tribal councilmen and women and say, "Why didn't you speak up, why didn't you say this?" I get so frustrated. That is why I'm running for president. If I win, you're all invited to my inauguration.

The second to the last thing that I'd like to mention, is the ICWA funding increases. They had asked for 20 million and they got cut. I think the amount you're getting is 16.77 million for the entire expanse of Indian Country. There's been a cut and a decrease in ICWA funding. Also, the Federal Register is supposed to be coming out with the new regulations.

If you're interested in the potential impact of these formula options, some of the thinking of other tribes on the formula options, the selection process, an update on the funding formula selection process to date, and the provision linkages to other tribes, communities, and individuals who have similar concerns, please call (503) 725-3038. I can give you the number later. Start talking to each other right now, especially those of you on the front lines, because we have enough to do. I know I'm going to ask you to do a little bit more.

I'm also encouraged to know that UCLA has made a strong commitment to Indian child welfare. With dialogue such as this, we can make things better. As a child care advocate, I'm very concerned about the future for children. I try very hard in all the things that I do to get more people in my community, Indian people, to become empowered so at the community level we can become stronger and we can get better services for our children. Also, at the community level, we can begin to heal so that we can provide safer places for our children. At the community level, we need to heal and begin that long journey to recovery so our children will have a fighting chance for the next seven generations; that they'll be healthier and stronger. More importantly, we need to recognize that it's not enough to just put food into our children's bodies. We've got to nurture their hearts and their spirits as well. It's not enough to just feed them. Everyone of us in each of our communities needs to assume that responsibility.

It's a very painful place to be. I cry a lot, I get mad a lot, I scream a lot. But once I get over crying and the screaming, I put the thing that the great spirit gave me called a brain to work. I start analyzing and strategizing and making the necessary phone calls towards getting our people together. In my community, we are now working closer together because we're going beyond the pain and the crying. We're working towards becoming a stronger unit for the welfare of our children which is affecting our tribal legislation at regional social service agencies and at the national level. Next year we need to work even harder.

We also need to work harder together to impact the congressional funding dialogue. We can put more dollars into ICWA. Most importantly, go in there with some real specific things. Some of those specific things that I'm going to be looking at is the need to provide more dollars for therapy for our children when they come home. We need to provide more dollars for our families so they are better equipped to deal with the pain that these kids are bringing back with them. More dollars are needed to provide ongoing training for our courts.

I just want to finish discussing turnover rates. Working in my community, the turnover in leadership takes place every two years. What I've been trying to do is to establish an office of children's affairs on my reservation, so that we have consistency and continuity. No matter how many times people get elected, this one office is going to be there as an advocate for children. This office will not be influenced by the two-year leadership changeover. Every time new leaders come in what happens? The whole policy system changes. So, what I'd like to establish is an

Office of Children's Affairs on my reservation, That office will provide continuity, consistency, as well as the physical, emotional, spiritual, and mental well-being of all Lakota children on my reservation. All of the people who work there are going to live there and stay there for ever. They're not going to go away, they're not going to work for BIA and IHS, and move up the career ladder, or go to Washington, D.C. and disappear.

Social workers come and go, because we burn them out, don't we? Every time I see a social worker in my community I say, "Hey, come here, let me give you a hug. You're doing good work." They say, "God, thanks Cecilia." So, every worker in my community that I personally know that's working with people, when I see them, I make it a point to shake their hands and give them a hug, to let them know that I know how hard it is. Sometimes that acknowledgment really makes their week. Sometimes somebody says, "Boy, you made my year." I reply, "Gee, that's even better than making your day, right?" We also need to reach out and pat each other on the back, huh? We need to tell each other that we're doing good jobs.

I said there are many hats to wear, but at the same time, the community has to assume, Indian communities, have to start assuming 99 percent of the responsibility for the pain in our communities. Any community has to own up to it. That means we have to claim it, we have to bring it back to where it started, with ourselves. Indian communities need to own 99 percent of what's wrong. All of the agencies are there for dollars and resources, however we Indian people are the ones who are responsible for fixing our communities. That means that we have to take a really good look at where we are and where we want to be. But most importantly, as an adult person, I have a responsibility for those little ones. In my culture, all adults are responsible for kids. In my culture, all of those children are my children. In my culture, I am their mother, especially as I get older.

It's not enough to say yes. We've got to start doing things to make life better for our kids. Advocating regionally and nationally for policy making legislation. More importantly getting healthy, because in order to do the work that we do, you've got to get your act together. When you're seeing pain out there everyday that is a constant reminder of your past, it's really hard. When we examine law enforcement and try to maintain the stability of law enforcement, it is not enough to train officers in our law enforcement techniques. We have a 70 percent turnover rate. I would say 98 percent of our law enforcement officers were born and raised on the reservation. Every time they go out there they see violence, battering and pain. Guess what? It reminds them of something in their life they haven't quite resolved yet. So, when we look at law enforcement it's not enough to train them in our law enforcement techniques and procedures, we need to get these people to obtain co-dependency therapy. We need to get them into some type of a healing treatment program to design their own healing program. Those law enforcement officers are out there and everyday they're reminded of some pain that they're carrying around. These are some of the things that we have to do so that we can heal and become strong Indian communities.

It's a real honor to be here with you today. I'll be here for a day and then I'm going back home. I've got a big maternal child health conference that I've organized and I need to be there to give them a pep talk and to get everything moving in order to put together a maternal child health plan for my tribe. Plus I've got to get out there and campaign so that I can become the next president of my tribe. My primary objective is children's advocacy.

Of course somebody will ask about the gender issue. You know, the last time I ran, the issue of gender was never a concern. Each committee meeting I went to, no one ever asked me if I was going to do a better job because I was a woman. No matter what anybody says, Indian communities and the people in the community, they watch you and they know what you can do. They know where you've been, and most importantly, gender in my tribe has not been an issue.

About four years ago on my reservation, we as Indian women and men, began a real big strong challenge. We began breaking down our denial, and brought to the forefront all the violence and the pain. We passed domestic abuse laws. We were able to begin some real planning for child advocacy.

Every April we have a march. We march from the Wounded Knee sign up to the radio station, our Indian-owned, community-owned radio station. Four years ago, we marched from the Wounded Knee sign and we prayed four times, and got to the top of the hill. We had a candle light vigil, everyone was asked to turn their lights off and light a candle. For half-an-hour, we had a prayer to empower, enlighten and make everybody strong. We're determined to put a stop to child abuse on my reservation.

We planted a tree. The first year we planted a tree in memory of all of our lost people who died of violence at the hands of other people in motor vehicles. We planted a tree, and this tree symbolized that as long as it grew, we would become stronger and stronger. We would become healthier, and when this tree became full-grown, we will have wiped out violence on my reservation. The next year we had a march, and every year thereafter we march on. Three years ago we planted another tree. This tree symbolized our commitment to Indian children, not only at Pine Ridge, but across the United States. And as long as that tree flourishes and blooms, we're going to have the energy and commitment to continue to advocate for our children locally, regionally, and nationally. I was just up there the other night after doing a radio show, and I looked at our trees and they're blooming and they're growing. I go up there every once in awhile to look at that tree, and it validates me. That tree is blooming. Get out there and scream louder, raise more hell, do whatever you have to do to provide a safer place for all of our Indian children.

Kevin Sanders: Thank you very much, Cecilia, for that inspiring presentation. I know I got a lot from it and I am sure that you have given us direction and a challenge for the remainder of this conference.

WORKSHOP 1

Fetal Alcohol Syndrome

(Wednesday, January 15, 1992)

Facilitator: Patti Munter, *Executive Director,* National Organization of Fetal Alcohol Syndrome

Patti: Hi, my name is Patti Munter and we have just had our first National Conference in Minneapolis called *Healing the Broken Cord.* That was in October and it was very successful. I know you mentioned you are CHRs and we got Indian Health Service to send two CHRs from each area to come and be trained as small group facilitators. After each large presentation, we broke down into groups of approximately twelve people and the CHRs led the groups. The groups were basically—well, I was at a Conference at the Lummi Reservation last February, where the same thing happened and that was where I got the feeling—I just felt that group workshops were the best way for people to emotionally integrate the type of information that they were getting and it worked really well in Minneapolis—and the CHRs got a lot out of it.

Our next Conference will be held next November in Albuquerque, and we are hoping to get Indian Health Service to send five or ten CHRs from each area this time, because it was very successful.

The National Organization for Fetal Alcohol Syndrome (NOFAS) is a non-profit organization. We are not an American Indian organization, however more than half of the members of our Board of Directors are American Indian. We really believe that Fetal Alcohol Syndrome (FAS) happens in all cultures. Initially we are starting to focus on the Indian community because this is where the highest incidence rates of FAS occur.

It is funny, but we went through a name change. When we first started we were called the National Organization for Fetal Alcohol Syndrome, and some of the people on the Board said that, "We should not be called the National Organization for Fetal Alcohol Syndrome, because people are going to think that we are advocating for it. " And I said, "That is ridiculous, who would think that?"

Well, about a week later I picked up the newspaper, *The Washington Post*, and there was an editorial by Michael Kensley who is one of the leading, liberal thinkers and writers in this country. His editorial was basically advocating for drinking for pregnant women. Actually the article was called, "Drinking for Two."

It really infuriated me because the first sentence began, "Although I have never been pregnant, I know what it is like to want to drink at the end of the day, and I cannot imagine that lugging the extra weight around would make me want that drink any less."

The editorial went on to say that the campaign about FAS is totally out of hand; that women should be allowed to drink in moderation. The editorial angered me, and I wrote a letter back, which was printed. It is amazing to me that there are still many people in this country—from doctors to women, to husbands to teachers—who do not understand that there is *no* safe amount of alcohol that pregnant women can drink.

We are trying to educate the public about the affects of alcohol to the unborn. That is what the NOFAS organization is trying to do. Later on, I will go over some of the programs that we have started to get off the ground.

The one question that I am asked most often "Is NOFAS just for American Indian people?" To me, the answer is that the American Indian community is where the healing has started, where the openness is, and where the changes can happen; it is a model for other communities. However, FAS is not just an American Indian disease. It is not just a White disease, nor is it just Black disease.

I mean sickle-cell anemia solely a Black illness. Tay-Sachs disease is a Jewish affliction. But FAS is across the board. As a matter of fact, a couple of months ago, a doctor was telling me that in Russia, where the alcoholism rates are sky high, that there are more babies born alcohol-affected than anywhere else in the world. These babies are taken away from their mothers at birth and institutionalized. FAS is a horrible, horrible illness in Russia.

Right now in this country, there is a huge vacuum, mostly in White America that exists. The root of the problem lies in the fact that the medical community is not at all aware or educated about FAS.

There is a study that shows that one out of five doctors in this country—one out of five—feels comfortable discussing alcohol with their pregnant patients and / or making a diagnosis. That is pretty alarming. Whatever the reason for this situation, whether it is because these doctors go home at night and have a glass a wine or a martini, they do not feel comfortable calling alcohol a drug. Perhaps it is because they simply have not been educated about the effects of alcohol; I think it is a pretty important question. Until ten years ago, medical school textbooks stated—and I have seen them—that the only reason pregnant women should not use alcohol is to prevent weight gain. I tell people this a lot. A friend of mine did not believe me; she is thinking about getting pregnant. She went to her ob-gyn in Washington, who had recently been named by the *Washingtonian* magazine as one of the ten best doctors in D.C.

She asked her doctor if there were any precautions she should be taking since she was thinking about getting pregnant. He said, "No, just eat right." She pressed on and said, "Well, what about alcohol, would it be okay if I had a few drinks?" He said, "Sure, if a couple glasses of wine relaxes you, if you need a drink to relax, then go ahead."

This advice is being espoused by the top ob-gyn in Washington D.C. This constitutes a real problem. So until we start educating informed medical students who will hopefully filter out into communities across the country, it is going to be extremely difficult to make real changes happen.

This is going on even now as we speak. There have been warnings about alcohol dating as far back as the *Bible*, "An angel came flying down and told a pregnant woman, behold, thou shalt conceive and bear a son. Now drink no wine or strong drink." That is in the *Bible*.

But it was not until 1973, that the effects of alcohol were given a name, Fetal Alcohol Syndrome (FAS). Moreover, it is not until April 1991, that FAS is determined to be the leading cause of mental retardation. It used to be third, behind spina bifida and Down's syndrome. Also, as of April 1991, the *Journal of the American Medical Association* came out and said that FAS is the leading known cause of mental retardation. That is an enormous, as well as, significant finding—if you really think about it—especially since it is a preventable disease.

The other thing that is really interesting to me, is to think about how many kids have been born with FAS over the years. How many children have been born impaired, not necessarily with full-blown FAS, which manifests with severe mental retardation, facial abnormalities, organ dysfunctions, and very low IQs.

On the other end of the spectrum is Fetal Alcohol Effects (FAE), which is symptomatic of learning disabilities, difficulties in abstract thinking, or difficulties in judgement. It is interesting to think about how many kids were born with FAE which was never considered a result of alcohol.

Of all the kids born with alcohol-related birth defects, only half are considered mentally retarded. Mental retardation is an IQ score under seventy. Unlike FAS, FAE does not have a consistent criteria with which to be diagnosed. It is much more difficult to diagnose. It is not just a problem of brain patterns, it is actually a problem of behavior patterns. Since 1981, the Center for Disease Control has reported that there have been about 3,000 cases of pediatric AIDS in this country. In that same time period, 70,000 children with FAS were born. If we estimate 1.9 per one thousand births, which in some communities is a low estimate, and in some communities that is a high estimation. Regardless, there is no comparison in how much time, media attention, and money that have been spent on these two issues.

When I lived in New York about five years ago, I followed— I do not know if any of you here are familiar with the Central Park jogger case. I followed it pretty closely, as did most of New York. I was a single woman—who does not jog, too lazy— but lived in the same neighborhood where it happened. I lived right near Central Park, and like most of the people that followed this case, I was absolutely shocked at how unrepentant the defendant seemed.

The case revolved around a woman jogger, who was savagely beaten and raped by a gang of teenage boys, while she was jogging in the park one night. These kids basically showed no remorse, no conscience. It was really amazing. Much, much later—last year as a matter of fact—I was talking to some people involved in the FAS/FAE community, and I learned that some of those kids had been identified as FAS by dysmorphologists, they are the doctors that specialize in diagnosing birth defects. By the way, there are only fourteen dysmorphologists in the United States that are trained to diagnose FAS/FAE.

Woman: Are you allowing questions through your presentation or afterwards?

Patti: It does not make a difference.

Woman: Okay, can I ask a question about FAS/FAE? Is it only alcohol-related, or does it include mothers who use drugs? Or is that a different term?

Patti: The term for crack babies is entirely different. FAS/FAE only refers to alcohol-related birth defects. Many children, especially in the urban areas like in Washington D.C. , New York , and Los Angeles, are both cocaine and alcohol-effected.

When I learned about the Central Park jogger case, I remember asking people, "Why is this not getting any media attention?" To me, crack babies are on the cover of *Newsweek* just about every other month.

The most dangerous and sad part about FAS/FAE is that these kids are born without a conscience, without the ability to tell right from wrong. Louise Erdrich, who is married to Michael Dorris, describes FAS as having a piece of your soul missing. This is pretty true for a lot of these kids, there just is no inner voice at all.

If you think about what it would be like to go through life with a partial soul, just imagine a entire generation of children born on this planet without an inner voice to tell us right from wrong, it is pretty sad.

The media attention for FAS/FAE just ***does not*** happen. Now maybe that is going to change after the movie, *The Broken Cord* based on Michael Dorris' book, airs in two weeks. I do not know, but all I can say is that I wonder what the relationship is between this country's love affair with alcohol. Alcohol is our pet drug, and we do not even want to call it a drug—but it is a drug.

Back to the medical community, one of the things that NOFAS is attempting to do is put together a project at Georgetown Medical School that is going to train first-year medical students on FAS/FAE.

Doctor John Acey, the leading pediatric dysmorphologist based in Albuquerque, is on our advisory board. He is going to come in and teach a significant part of the FAS/FAE training program.

Medical students will also be exposed to panel discussions with doctors who are unable to discuss alcohol with their pregnant patients, as well as with doctors who are comfortable discussing the harmful affects of alcohol use with their patients. The discussion will also be a forum for students—which I think will ultimately break down some of the barriers—to address alcohol-related issues.

Another segment of the Georgetown program is going to be a study of Indian Health Service physicians to determine what their level of awareness is about FAS/FAE. This will happen in Spring 1993.

Last October, a report came out from a hospital in Houston and it showed a 100 percent failure rate diagnosing FAS. The medical records of forty-eight newborn babies, known to have alcoholic mothers, were examined at one year of age. Six of them had significant signs of full-blown FAS, which at this point is entirely diagnosable, if you are trained and know what to look for. Not one of those babies had been diagnosed, not a single one.

It is really important that we get these doctors educated not only on the effects of alcohol, but educated on how to know what to look for and how to diagnose these kids. If this program is successful at Georgetown, we are going to try and implement it in medical schools across the country.

A lot of times people ask me, what is the point of getting doctors to learn how to diagnose FAS/FAE when there is no treatment. I understand that point of view, but right now there is no treatment and there is no cure, but there is preventative education. You have to start somewhere, and if you throw your hands up in the air and say, why bother, the problem is not going to go away; it is definitely not going to get any better.

As of 1985, only 57 percent of Americans under the age of forty-five had ever even heard the words FAS. There is a study that shows that 90 percent of Americans suspect that alcohol can cause damage to a fetus; yet, 33 percent of the women surveyed believe that three drinks a day were in fact safe.

So, I would like to ask all of you, "Have you all heard of FAS or FAE before today, and are you aware that it is not safe to drink alcohol if you are pregnant?"

Man:: Before when?

Patti: Before this Conference?

Man: Oh, sure.

Patti: So it is a pretty well-known term?

Man: It is, but we are probably all in the field.

Patti: Okay, because I still meet people, sometimes when I am at conferences, and people just do not know the term at all—hopefully that will change.

Rodney Grant, who you heard this morning, is our national spokesperson, and in September we filmed some public service announcements featuring him. Jimmy Smits, who is starring in *The Broken Cord*, is also going to be filming some public service announcements, and they will be distributed on national television this spring. These announcements are a very positive movement toward furthering public awareness about FAS/FAE.

We also had a tape of the conference here in *The Broken Cord*. Cecilia Fire Thunder, who you heard this morning, and Rodney Grant, along with a lot of other people in the field, are on the tape. It is a very good educational tool for communities, so there is an order form in these folders.

We are also in the beginning stages of a book to be used to educate American Indian kindergarten kids on FAS. It is going to be illustrated by Sam English, who drew the poster for our Conference. The feeling about this book is that the really young kids need to know what the effects of alcohol are, not necessarily in a very clinical and scary way, but in an informative way. We are trying to make this a book of fables and short stories with messages relating to alcohol woven in, not necessarily FAS, but informative messages about alcohol, because believe me, these kids along with all the other kids in this country, are really being sent messages at an earlier age.

Someone sent me a comic book from Harvard that they had done on FAS for little kids. The depiction of Mister Fetal Alcohol Syndrome with a cape, along with alcohol-soaked brain characters talking to each other, was very scary. It seems to me, that there is a gentler way to educate kids, so that is what we are now working.

Also, when we were at the Lummi Conference, we had an art contest at the Lummi Tribal School for a poster on FAS. I brought some of the posters today; they are in the registration room. We got the BIA and the IHS to send 2,000 posters out to all the tribes. Both agencies also declared September "FAS Awareness Month."

Things are moving along slowly, but surely. Definitely, more people are being made aware of what the problems are. I would like to know if you have any questions on FAS/FAE or what we are doing?

Woman: Has it not been recently discovered that if the father drinks, that too could affect the child?

Patti: That still has not been determined. They did just find out that if the father uses cocaine, that definitely affects the fetus. They have not made that determination with alcohol yet. But again, because they do not know, it only makes sense if you know you are trying to get pregnant, the father should probably not drink.

Woman: But that is really idealistic.

Patti: Exactly. I mean that is like telling women, whose doctors say that it is okay to have two glasses of wine, well, it has not yet been proven, so I tell them that it is safer not to drink.

Woman: The people that we deal with, on the reservation for instance, do not even go see the doctor until they are five to six months along in their pregnancy. The father may be a significant other or is not really available once the pregnancy starts out. So you do not have those kinds of factors to work with.

Patti: That is right. I realize that, and that is why NOFAS is trying really hard to not just target the women and the drinking moms. The whole community needs to know what these issues and problems are, because it is also up to the men in the community to change as well. It is up to the teachers, it is up to the health care workers, it is everybody's problem—it cannot fall on the shoulders of the women alone.

Woman: There are two issues to this problem. One is basically the education of the community, and that is something that we can control as a Board. So one question I ask is, "Do you have literature available or is there a mailing list? Potentially, our Board can become a communication mechanism for the entire community."

Secondly, I see a lot of younger, unwed mothers and teenagers, who are having more sex, who will hopefully be impacted by the NOFAS communication and education process regarding FAS/FAE. This younger generation will be affected, more than people my age or of an older generation, because what we are dealing with is a situation where more and more FAS babies are coming to the Board's attention for court action.

In fact, we are currently going into a court situation, based on a family's prior history, to remove a newborn from them because of the potential risk to the baby; this is a new area for us to go into. Usually it has been after the baby has been in the home and actually abused, that we take action or it comes to us.

As we are heading into that arena, I am seeing more intense cases. Every time a child is placed with an extended family, relative, or whatever the situation is, the husband and the wife have another baby.

In fact, in this one situation his response was, "Go ahead and keep taking them, because I am going to keep making them." And it just goes on, and now there are seven children involved. So, this older generation does not want to quit drinking, they are not really going to take this information and progress too far with it. But it is the younger generation, that the education process can impact significantly—which I think, is important. However, we need avenues for this education process.

Patti: I actually brought some statistics to share with you today, because my main area of interest is the very young kids. I believe that is where the largest chance is to make a change is.

Our generation can make the choice to get sober, or to not get sober, but if you reach the real young kids—this is where change can make a wide-ranging impact.

There is a study that came out last month, where 12,000 high school students, from grades nine to twelve, were asked what their behavior had been in the past thirty days, not whether they had ever experimented with this or that, but just what they had done in the past thirty days.

Two percent responded that they had used cocaine. Fourteen percent said that they had smoked pot, and fifty-nine percent said that they had taken a drink, and thirty-seven percent of those said that they had five or more drinks on one occasion.

We really have a problem. Those statistics are just for youth down to the ninth grade, but we all know that there are kids in grades six and seven who are having five or more drinks on one occasion. It is sad that we have to keep educating younger groups of kids about the harmful effects of alcohol.

I also wanted to discuss the recent Camel cigarette advertisements. How many of you are aware of the Joe Camel cartoon controversy that has been going on? Camel cigarettes' new campaign? *The Journal of the American Medical Association* (AMA), recently released the results of a study they did. This is the first study which documents how strongly advertisements influence young children.

What the AMA found, is that very young children see, understand, and remember advertisements far better than adults. The greatest recognition of the Camel advertising campaign occurred in the youngest age group examined. Thirty percent of the three-year-olds—knew who Joe Camel was, and ninety percent of the six-year-olds linked Joe Camel to cigarettes. Six-year-old kids were as familiar with Joe Camel, as they were with Mickey Mouse. So, although you cannot clearly say, since they know who Joe Camel is—because kids associate that image with cigarettes—they are going to smoke. However, you cannot say that they will not smoke either.

I think it is really important for people to be aware that three-year-old kids, who see drinking in their house, or three-year-old kids that see drinking on TV, or three-year-old kids that see sexy, alcohol ads in magazines, whatever the medium is, start picking up subliminal messages. The only way that I know to counteract these messages is a book that tells them in a gentle, non-didactic way, that drinking and smoking often have negative effects.

Man: Do you know of any statistical studies focusing on the backgrounds of women who have given birth to FAS children? Information highlighting their socio-economic or drinking histories?

Patti: There have been studies that showed that mothers who have one FAS baby, as you were saying, are twenty-five percent more likely to have more FAS babies. But to answer your question, one of the huge problems that we are facing as an organization, is that there are no prevalent national studies on FAS/FAE. None. The Center for Disease Control (CDC), recently started a two-year study that is hopefully going to turn into a national prevalence study to do statistical research. Because if you are advocating for a problem, you need hard numbers . It is a very black and white thing.

Many of the studies that have been done focus on the Dakotas, isolated areas, or different tribes. I think we need to look at the entire country—White communities, Indian communities, Black communities—because it is a much larger problem than we realize.

Man: Do you think, and I am only speculating, that if such a study had been done, that you would find that the problem is widespread? Also, what about those women who are pregnant who should not drink at all, but believe the one or two drinks cannot hurt theory, how do they compare to the people who have had a long and continuous drinking problem for fourteen to sixteen years? Do you think they would be having higher occurrences of FAS/FAE children statistically, than someone who had just started drinking?

Patti: Well, there is evidence that shows that when you drink alcohol during the pregnancy, it effects the fetus differently. Evidence shows, that if the woman is well-nourished or if she is malnourished, will impact whether the alcohol is going to effect the fetus. There are some women who can drink five glasses of whiskey, and it will not effect the fetus. Actually, there are some studies which determine whether there is a genetic predisposition, not for FAS, but to a genetic predisposition for alcohol to effect the fetus.

There is no evidence which indicates that the fetus is more likely to be effected by alcohol, if the mother has been drinking for ten years. But again, I think that there are many factors such as how well-nourished you are that may make a difference, however, nothing has been proven.

I do think that in White, upper-middle-class communities, there is a lot of drinking during pregnancy going on which is closeted. That was what I referred to before. It would be interesting to see how many babies are born with learning disabilities, or with all of these other slightly lesser problems, which were caused by alcohol.

Woman: I guess another question is, does FAS, although it has only recently been identified and labeled, have a previous generation of people suffering from its effects? Where are all of these people?

Patti: They were never diagnosed.

Woman: So even though there are more FAS symptoms being identified now, there could still be just as great a number of undiagnosed cases out there, but where are they? Are they institutionalized, or they have they just never been diagnosed?

Patti: People that were born with full-blown FAS were probably classified as mentally retarded. Still right now, even though it is identified—and I am sure you see this in your own communities—the kids that we know who have FAS do not have separate educational programs. They are just thrown into special education classes.

Actually, there is one school in Sells, Arizona, and they made a presentation at our conference. A woman, named, Doctor Pat Tanner, is developing a curriculum for kids with FAS. Classrooms have been specifically designed for these kids, and she is doing wonderful work.

Woman: Is there a study or statistical information which suggests that the dysfunctionality within a lot of families could possibly be attributed to FAS?

Patti: Well, there are no studies, but I think that is a given.

Woman: Okay, now if I go back to my first question, do you have a mailing list?

Patti: I will pass around a sheet of paper, please put your name, address, and phone numbers, and we will add you to the mailing list. We do send out information, literature, and conference announcements.

Man: This literature will cover all the areas on how to implement educational progress, that NOFAS could assist us with? Is there a curriculum that you can implement in the tribal schools? What grade do you start at, let alone educate the community?

Patti: What we can do is put you in touch with the people in Arizona, who currently have a curriculum. Absolutely, at this point, NOFAS is a clearing house. We get hundreds of letters a month asking for referrals, doctors, and this and that. The other service we provide is to connect people to the appropriate resources.

Woman: Open networking?

Man: Your organization, does not have a specific focus on FAS/ FAE as it relates specifically to Indians?

Patti: It does have a focus on the American Indian community.

Man: It does?

Patti: Absolutely. But it is not exclusive focus. Down the line we hope to be able to re-create what we are doing in the Black community, in the Hispanic community, as well as in other communities. But right now, we are starting where the incidence rates are the highest.

Man: A year or two ago, there was a segment on *20/20*. Actually, there have been two programs, that I have watched with interest. One was a story about a reservation in South Dakota.

Patti: *Tragedy at Pine Ridge.*

Man: That was a devastating story. Then there was one that took place in either Albuquerque or Gallup. It was the one where they had outlawed drinking on the reservations, so the Indians would walk miles into town. Boy, that was terrible and during the cold weather, they would find a number of dead bodies going back toward the reservation. They talked about the problem on the reservation, and attributed it to just nothing to do, no where to go. And, they drink cheap alcohol. In both cases, there is a severe economic problem, so why not just sit around and drink? That is the hardiest problem to eradicate. You take a healthy person, who has a drinking problem, and maybe you can talk him out of it by giving him alternatives.

Woman: Well, I think on that particular issue they were concentrating on alcohol. However, they were also concentrating on their surroundings, their reservation. I mean there is nothing on the reservation, just a little grocery store and that is it. There is no economic development of any type. They've consolidated a lot of issues into just one.

Man: But sometimes, the problems seem so impossible. How do you get people to stop drinking, when that is really all there is to do? I guess it means getting better education, jobs, and the rest of it, too.

Woman: That was another issue they brought up, there are no jobs.

Man: You ask them, "Why do you drink?" Well, they like it and there is nothing else to do. If you want to get them off alcohol, you have got a long way to go.

Patti: What is the alternative?

Man: I do not know. I am sure your organization probably cannot throw a whole bunch of money into developing new industry and providing new economic opportunities.

Patti: We are trying to get enough money to pay our rent every month, let alone funds to develop industry. We started the first national task force on FAS last November. I went in and talked to Doctor Rhodes, who is the head of IHS, because very little is being done on FAS. Although that has recently changed.

A lot of times people at IHS say the same thing you just said, which is, "Why just focus on FAS, it is a symptom of domestic violence, it is symptomatic of unemployment." However, it is a big rock, and you have to start chipping away somewhere, because if you do not start chipping away somewhere, nothing is ever going to change.

NOFAS is not trying to get every alcoholic to stop drinking. Our focus is to help people understand, that when you are pregnant, alcohol affects your fetus and that is different. That is different than trying to solve the entire alcoholism problem in the Indian community or any other community. Do you understand?

Man: I do. It is just so complex.

Patti: It is very overwhelming, but the way I stay focused on the problem without getting overwhelmed ,is by taking one little thing at a time. The project with medical students is going to send ripples out. The book will send ripples out. The conference we just had with over three hundred people—I mean I am still getting letters from people who took information, skills, and a lot of positive information about healing back to their own communities—that is how change takes place. It is slow. It is not like there is an instant answer for this problem or anything else.

Man: Is this a made-for-TV movie? If it is successful, I think that will certainly help spread the word. And I do not know anything about this.

Patti: *The Broken Cord* is a very moving book that I suggest you read, if you are interested in this issue at all. It is about Michael Dorris, who is part-Modoc Indian. He is director of American Indian Studies at Dartmouth, and the book is about his struggle as a single father raising an FAS child.

He adopted an Indian child from Pine Ridge, South Dakota right before FAS was identified, so he had adopted a little boy with severe problems and nobody who could give him any answers. Not doctors, not teachers, no one.

He had an amazing journey raising Adam*. Very tragically, Adam was killed a few months ago. He was hit walking home from work in New Hampshire one night.

It is not just the story, of one father and one son, because Michael went everywhere for answers. Well, after I read that book, my life was completely changed and I just wanted to try and put some of my energy into this issue. (*Dorris' son is known as "Adam" in *The Broken Cord*, this is not his real name).

Man: Is there anyway to put pressure on legislators? My wife works in schools and they have several children who have this problem. They are just a handful, and it is projected that more children with FAS/FAE will be in classrooms in the future. The legislators have a tremendous impact on education and social services. If we could wake up the money people down in Sacramento, or up in Washington or in Oregon, we can make an impact on the system.

Patti: What state are you from?

Man: California.

Patti: Well, I will tell you that one of your Congressmen, George Miller, has been incredibly supportive of this issue. Brock Adams, from Washington, is also incredibly helpful. I would encourage you to write letters and get your whole community to write letters. Get your schools to write letters, to George Miller and to Brock Adams, saying that FAS is a serious problem and that we acknowledge their support of this very crucial issue. That is one place to start. You would be amazed at how much those kinds of letters and petitions help.

Man: In California—I do not know if you have it up where you are from—every place that sells alcohol is required by law to post a big sign that says, "Warning, do not drink this beverage, if you are pregnant."

Man: I do not know how much good that does, but it is a law that this warning is displayed.

Patti: It is something. Henry Waxman is somebody else to write to. He has recently held some hearings on Indian issues, and he has shown some interest in being supportive.

Woman: What about on a personal level? I guess the impact that FAS had on me was, we have son. He is half-Oneida and half-Winnebago. He is ten-years-old now, but we adopted him when he was five-months-old. He is a beautiful little boy. He is healthy and he is doing good in school. When he was younger, he had problems maintaining concentration. We suspect that was probably just a tinge of FAS. Fortunately, he is lucky and we are lucky. He does not have the full-blown symptoms of FAS.

But when I look at him, I think about how many other children, Indian children, who have been adopted and FAS/FAE has never been identified. How hard it has to be for the parents who do not know anything about the family to try and come up with some kind of diagnosis. Furthermore, how many have the money required to deal with the treatment or whatever is required.

As an example, we had a little girl with us who was two weeks younger than my son . When they were both two-and-a-half, she was identified as an FAS baby. We had only had her for two years. The age difference in the two children was only two weeks, but where he was calm , she was easily agitated. She was very hyperactive. She had some of the facial symptoms, but she was really intelligent, but behaviorally and emotionally, she was a mess.

When we got her, she was eighteen-months-old, and she was already a mess. She had been through a lot. I mean it was not just FAS, she had been through the whole gambit. We had her for two years.

She went back to her mother. They could not come up with enough evidence for an actual termination of parental rights.

She was returned to that drinking cycle with her mother. But the difference between the two children was amazing.

Woman: Because we are trying to heal the whole family, bring them along, we have to start where you are. The stage where you are at, is that the child is never going to be normal. So family life has to be as normal as possible, by learning the necessary skills to effectively deal not only with the family, but with the child as well.

This situation was very frustrating for my husband and me, to the point, where we were blaming ourselves. We were thinking we were totally incompetent parents, as far as, dealing with this little girl. Basically, we did not understand that many of the problems we encountered, were because we were dealing with the problems inherent in parenting an FAS child . We really thought it was our inability to be good foster parents. This information is important for foster parents, especially, because they usually never get normal kids. You usually get kids who have a lot of problems. So it is real important, for each Indian Child Welfare Department, to network with their foster parents. We always end up with these kids when they are shattered. You have to try and put the pieces back together. If you do not know what you are dealing with, it is real frustrating.

Woman: Another thing about Michael Dorris' *The Broken Cord,* is that I made my whole staff read that book. I now court order defendants and parents to read it, especially young defendants.

Patti: Good for you!

Man: Good for you, that is great!

Woman: And a lot of parents as well, they are also required to write reports. Since we all know the book, we know when they have plagiarized, and when they have not.

Patti: Good for you. This is really good to hear.

Woman: We make them write reports on the ALCOA, the adult-child of alcoholics, and all sorts of other subjects, but FAS is definitely one.

Man: Well, that is a great idea. I am in court all the time.

Woman: Me, too.

Man: I have never had a judge order somebody to read something; I like that idea. We do not have a lot of FAS in our county, but we sure have a lot of crank. There have got to be books on drug addiction that wouldn't hurt somebody to read.

Woman: Did you say crank?

Man: Crank.

Woman: What is that?

Man: Methamphetamines. Butte County is the crank capital of California.

Woman: I've never heard of that.

Man: Oh, it is the cheap; the poor man's heroin. It is a very vicious, dangerous, addictive chemical. We have hundreds of crank babies.

Woman: Well, that is a good idea. I mean that is an excellent idea. We could do the same thing as a Board.

Patti: Try and get the book in your schools as required reading. You know I think that is a terrific suggestion.

Woman: Well, some of them do not have the skills to read. Michael Dorris is writing at an advanced level, thus their spouses, or their girlfriends, or their boyfriends can help them read through it. At least they are all reading.

Patti: That is right.

Man: It is a more hands-on approach. Of course, we have social services. We send them to parenting classes, and it is like college, but you can pretty much just sit there shine it on. But if someone says, "Read this and come on back and talk to your social worker about it." They know that she will know if they have read it or not. If they haven't, they are in trouble.

Patti: Another suggestion, try and organize groups to come together and view the movie the night it airs—and discuss it with one another.

Woman: That is a good idea. At the Board, we basically serve in place of a judge, because we do not have a tribal court . We basically function as the judicial arm of Indian Child Welfare. But our Board is comprised of seven members. We usually only come together in crisis situations, within our regular meetings. However, it is only during meeting times, because everybody works another job, has a family, etcetera.

So we really need to do more exercises on functioning as a group, just like what you are talking about. Or even what you are suggesting about viewing that movie together. I mean that could be a Board activity.

Patti: Yeah, it is a good event, coming together as a community and talking about FAS/FAE, because it needs to be talked about.

Woman: Earlier you mentioned there are only fourteen specialists in the field to treat FAS.

Patti: To diagnose.

Woman: Diagnose. Would you have a name?

Patti: We do. We have a list of those specialists, so if you write me, or call me at the Washington address, we can send you a copy of the list.

Woman: Oh, is your name and everything in here?

Patti: Yeah, there is a brochure and a fact sheet included. This is the order form for the video. I really recommend this for communities, because it includes the school in Arizona. It also includes Rodney, Cecilia, and Sam English. A lot of really good people are featured on the tape. There are also two audio cassettes with everybody's presentations and thoughts about FAS, so it is a very good tool for communities.

Man: Do you know if the alcohol industry has been approached and confronted with what has now been diagnosed, as a serious disease, which is different than alcoholism?

Patti: I think the alcohol industry is attempting to put money into organizations such as Mothers Against Drunk Driving, as well as several other issues including FAS, so that what happened to the tobacco industry, does not happen to them. Whether or not if is a sincere effort is a whole other question. But I see magazines they put out, and I am sure you all have seen the ads they run in order to appear socially responsible.

Man: And they continue to turn out tens of millions of gallons of alcohol a day.

Woman: I feel that it is just cover up, because a year ago the industry did not make the maximum profit they could have made.

Patti: I agree, but on the other hand, if that money that they want to give out can be used to do preventive education.

Woman: Exactly. But they will not do that, unless, other parties put pressure and leverage on them.

Woman: I think working with the alcohol industry is really a hand-in-hand situation. That is where that preventive education money is like a double-edged sword. For instance, in my community—our annual pow-wow held on July 4 is sponsored by Coors beer. You know all the paraphernalia they donate, welcoming the pow-wow attendees and participants, the banners, even the contest dancers' numbers have Coors written across the top. They get plenty of visibility, advertising, so you see it is not all free.

Man: Listening to this, I was just thinking, because of the desperate nature of the situation, that it would be advantageous to attack a vulnerable area—doctors. Especially since, many physicians are still saying that it is okay to drink and be pregnant; doctors do not like to be attacked in any way.

Woman: Spoken like a true lawyer.

Man: If you can somehow mount a campaign accusing doctors, putting them on the spot, showing some evidence that drinking *any* alcohol during pregnancy is harmful. They know it and for some reason are afraid, or ashamed, or whatever it is to say so. We should try and make them accountable to themselves. It might be the type of campaign that would not be as costly as overturning the whole system, which sometimes is the tactic that we have to take.

In order to make those people who give medical advice accountable, it does not sound like that should be that difficult. However, if nobody pushes them, doctors are among the last groups in the world to be pushed.

Woman: It is true.

Patti: This is part of the public education campaign that we want to mount. We need to get some major funding for that.

Man: I was just thinking of something a little more directed and centered, focused on doctors for a little while to see if they can withstand the heat.

WORKSHOP 2

Responding to the Family in Indian Child Welfare

(Wednesday, January 15, 1992)

Facilitator: Marc Mannes, Ph.D., *Child Welfare Program Specialist*, U.S. Children's Bureau, Department of Health and Human Services, Washington, D.C.[*]

The Emphasis On The Child In Indian Child Welfare

The Indian Child Welfare Act (ICWA), Public Law 95-508, was passed primarily in response to a study conducted by the Association of American Indian Affairs that documented the widespread removal of American Indian and Alaskan Native children from their homes and their placement with non-Native families (*Unger*, 1977). The ICWA urged tribal governments to assume jurisdiction over cases involving children living on a reservation, and required state courts to transfer jurisdiction to tribal courts in child welfare cases involving young people living off-reservation.

In response to the passage of the ICWA, many tribal governments have revised existing or developed new tribal codes dealing with abuse and neglect and used them as the basis for providing protective services. Tribal governments and Indian non-profits have received funds from the Bureau of Indian Affairs (BIA) to administer child welfare programs.

There is a basic tension in child welfare, wherever and with whomever it is practiced, and it involves finding and maintaining that often elusive balance between protecting children and preserving families (*McGowan*, 1990).

FIGURE 1

protecting children — preserving families

There is substantial evidence to argue that in the course of developing programs and services since the passage of the ICWA, policy makers and practitioners have for the most part concentrated on protecting children and Native culture. The field of Indian Child Welfare has almost exclusively emphasized creating opportunities for culturally appropriate

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[*] This presentation is based on an article published in *Child Welfare*, Volume LXXII, Number 2, March-April 1993, pp. 141-152, entitled "Seeking the Balance Between Child Protection and Family Preservation in Indian Child Welfare." This presentation was made when the author was an Assistant Professor of Social Work and Director, Family Preservation Institute, New Mexico State University.

Appropriate placements, and only minimally dealt with the preservation of families. The dominance of the child/cultural protection and culturally appropriate placement themes is quite understandable. After all, it was the anguish and anger over the placement of American Indian young people with families outside of their culture, acts that came to be understood as a form of cultural genocide, that secured the passage of the ICWA.

Since the passage of the ICWA, professionals have worked to establish Indian foster homes and quality Indian foster parents in response to a growing need for placements. Indian Child Welfare programs have developed placement standards that are culturally appropriate and consistent with unique tribal traditions. Once these standards have been promulgated, Indian programs have had to battle states regularly to get them accepted. Quite a number of tribal and non-tribal Indian Child Welfare programs have chosen to remove children from troubled families and send them to live with aunts and uncles or grandparents. These "relative placements," tend to be viewed by the non-Indian child welfare system as temporary or long-term foster care settings. Consequently, tribal governments and Indian nonprofits providing children and family services have often had to struggle with states and get them to accept these extended family placements as legitimate. Meanwhile, Indian Child Welfare program staff have also consistently worked to establish sensitive and caring institutional placements for troubled children and youth.

Federal government policies have also contributed to this emphasis on protection and culturally appropriate placement. If one were to review discretionary funding announcements published in the Federal Register during the late 1970s and most of the 1980s, from the BIA, the main source of Indian Child Welfare program funds, one will note the emphasis was placed on developing child protection and placement-related services.

The Consequences Of Emphasizing The Child

In a child welfare system where the focus is on child protection and placement, it is likely that the placement of children will increase and attempts to prevent placements will not be emphasized.

A federally funded study of Indian Child Welfare (*Plantz et al*, 1988) confirms this. The study found that since the passage of the ICWA, the number of Indian children in substitute care has risen from roughly 7,200 in the early 1980s to approximately 9,005 in 1986. Thus, during the first half of the decade of the 1980s, the number of Indian children in placement has increased about 25 percent. Thus, even though Indian children make-up about 0.9 percent of the total child population in the United States, they account for 3.1 percent of the total substitute care population. Indian children appear to be placed in substitute care at a rate that is 3.6 times greater than the rate for non-Indian children. Also, the *Plantz et al.* study could only confirm placement prevention work having been conducted in 41 percent of a sample of case records reviewed for American Indian children in public agency care, 37 percent of a sample of case records reviewed for children under tribal government agency care, and 33 percent of a sample of case records reviewed for Native children in BIA care.

So, not only have placements been consistently on the rise since the passage of the ICWA, but there doesn't appear to have been much attention and energy paid to placement prevention in any of the systems serving Indian young people.

One of the most startling findings of the *Plantz et al.* study involved determining where the increases in placement were coming from. According to the research, it is the tribally-run Indian Child Welfare programs that seem to be responsible for the increasing rate of placements.

In a sense, the legislative intent of the ICWA is being accomplished; tribal governments are assuming responsibility for more and more of their children as the states and the BIA transfer jurisdiction to the tribes. This should please most concerned parties—the problem consists of an ironic twist to the success of the ICWA. Tribally-based child welfare programs seem to be responding to their increasing caseloads by acting as other jurisdictional units have historically behaved—they are breaking up Indian families, separating children from their parents as they make extensive use of out-of-placements.

Regrettably, this emphasis on placement is contributing to yet another instance wherein American Indians and Alaskan Natives are not able to maintain families and raise their children. First, there were the federal boarding schools that forced the removal of Indian children from their families in order to assimilate them into American society (*Szasz*, 1974). Second, there were the culturally insensitive actions of state, county, and local social services that led to the widespread removal of Indian children from their families (*Blanchard and Barsh*, 1980). And now, in this third instance, the focus on child protection and the placement of Indian young people in various forms of substitute care is separating children and parents.

Even though many of these young people are now being placed in culturally appropriate settings with either extended family, clan, or other American Indians, placement is not responding to underlying difficulties. A number of informal conversations with both tribal and urban Indian Child Welfare providers suggest that in many instances, it is adults who spent part of their childhood in some form of substitute care that are now establishing troubled families, producing children who are experiencing difficulties, and ultimately requiring child welfare programs to deal with the issue of placing their children in substitute care. In many cases, children placed in substitute care eventually wind up returning home to live with their troubled parents, who typically have not received any assistance once placement of the children has been made. These parents are not prepared to deal with their children and problems tend to quickly resurface. At the same time, many of these parents who have not received any services end up having more children for whom child welfare services may eventually inherit responsibility.

The expanded use of out-of-home placements and lack of employing placement prevention practices occurs despite the fact that Title II of the ICWA contains language which argues that before an out-of-home placement has been made, efforts must be undertaken to keep the family together. The point being made is not that the dominant theme of child protection and cultural preservation via culturally appropriate placement since the passage of the ICWA is wrong or even inappropriate. No doubt in many situations protection has been necessary or placement essential, and placement-related efforts to ensure the security and safety of young people should not be curtailed. The fact is, there will always be a need for various forms of substitute care for certain children. The point is that the significant focus on protection and placement in Indian Child Welfare is too limiting and may be leading to consequences no one is pleased with.

Applying Family Preservation To Indian Child Welfare

Family preservation has emerged as a response to identified shortcomings of traditional child welfare services. Throughout the decades of the 1960s and 1970s child welfare was criticized for excessive and unnecessary placements of young people in substitute care, especially ethnic minorities (*Pecora*, 1991). Based upon evidence cited earlier, family preservation would seem to be quite relevant to Indian Child Welfare.

Standards developed by the Child Welfare League of America (*CWLA*, 1989) distinguish among three different types of family preservation programs.

A. *Family Resource, Support, and Education Services (FRSE)*

Community-based services that assist and support adults in their role as parents, with the primary objectives of promoting parental competencies and behaviors that lead to healthy and positive personal development of both children and their parents. These programs respond to families that are generally healthy but because of socio-economic status or parental marginality in the labor force might be susceptible to problems. These efforts target families who have the potential to be "at-risk."

B. *Family-Centered Casework Services (FC)*

Services that encompass a range of activities for families with problems that threaten their stability: case management, counseling/therapy, education/skill building, advocacy, and/or the provision of concrete services such as food, clothing, or health care. These programs focus on families where problems are beginning to arise or have occurred and there is a need to respond before they worsen. Families, served here are demonstrating early signs of being "at-risk," but are not yet in crisis.

C. *Intensive Family-Centered Crisis Services (FC)*

Intensive counseling, education, and supportive services to families in serious crisis, with the goal of protecting the child, strengthening and preserving the family, and preventing what would be an unnecessary out-of-home placement of children, or promoting the return home of children temporarily in out-of-home care. These services work with families experiencing a situation that is so serious thought has to be given to removing the child(ren) from the home. These families are "at-risk" and emphasis is on diffusing the crisis. The various models can be compared and contrasted according to program attributes.

Program Response—The time frame for responding to a family again varies, but is in the more crisis-oriented programs initiated within 72 hours. In the less crisis approach contact with the client occurs within a week.

Delivery of Program Services—Services are most often provided in the home of the family, or occasionally at a "neutral" community site.

Availability of Program Services—Again, in the crisis-oriented programs services are made available to families on a twenty-four hours a day, seven days a week basis.

Duration and Intensity of Program Services—The time frame for services varies from 4-8 weeks for the more intensive crisis-oriented models, to as long as seven months. In the short-term models, workers can be involved with the families for up to 20-30 hours per week. In the longer term approaches, hours are reduced accordingly.

Caseload Size—In the short-term, intensive programs, program staff work with as few as two families at a time. Usually the relationship is one worker to one family. With the more extended term models, program staff can typically work with from 10-12 families.

Techniques—Even though a vast array of different techniques are used, virtually all focus on supporting the entire family unit. Indian Child Welfare has not overlooked the role or importance of the family. Most Indian Child Welfare programs would tell you how important the family is and some even spend time working with families.

Yet, employing family preservation entails taking a major step beyond recognizing the value of families and dealing with them. Family Preservation calls for a major shift in the way child welfare work is practiced. According to *Stehno* (1986) and *Whittaker* (1991) family preservation represents a fundamental metamorphosis in child welfare; from a model based on child rescue and placement to one predicated upon family support. The Family Preservation perspective calls for creating a service continuum, delivering services addressing basic life skills and environmental concerns to children and parents in "normalized" settings such as the home, rendering services that are supportive and strengthening of families, and employing the person-in environment perspective.

The concept of family preservation incorporates a philosophic stance and promotes novel program structures which have the potential to broaden Indian Child Welfare's vision of its mission. Moreover, family preservation is not only applicable to keeping families intact; with placement rates as high as they are for American Indian and Alaskan Native young people, family preservation can and is being used as a strategy for reunification.

Examples of Indian Family Preservation Programs

A number of American Indian and Alaskan Native communities have implemented family preservation projects in the last several years (*Mannes*, 1990). This has been a direct result of increasing governmental support, at the federal and state levels, for family preservation initiatives with Indian people. Let's examine a sample of these family preservation programs to see how they are funded, how they are organized for service delivery, what services they provide, and who they serve.

The Federal Administration for Children, Youth and Families funded two service providers to respond to the needs of families and reduce placements. The Denver Indian Health and Family Services, Inc., an urban agency, began operating a program in 1987 to identify at-risk children and families to prevent the placement of children in substitute care by coordinating mental health services for those children and families. When placements were made, the project sought to minimize their impact and worked toward reunification as quickly as possible. The program's other objective was to foster coordination among the diverse service providers for American Indian people in an urban setting. The Bad River Tribe of Wisconsin forged a program in 1986 to prevent child abuse and neglect and help end the dissolution of American Indian families on the reservation. The initial step involved designing and administering an assessment model to identify the at-risk population. Program services were then targeted for the at-risk population. These services included in-home skills training in how to be an effective parent, referrals to other agencies for required services, household management skills, and advocacy for adequate housing.

In comparison, other tribes have taken the lead in formulating and operating family preservation services and have created the opportunity to secure funding. Plagued by an extremely high rate of foster care placements, the Ute Mountain Ute Tribe of Colorado in 1987 requested funds from the BIA (funds that would have gone to pay for children in substitute care) to implement a project to prevent out-of-home placement. *"Project HOMEBASE"* consisted of four components : 1) family support workers assisting family units in need; 2) strong collaboration with the local school system to identify school- related problems quickly and maintain the children in school; 3) use of a curriculum on how to be effective parents; and 4) a reward system for parent and child accomplishments. The Oglala Nation in South Dakota has received BIA funds to operate its family preservation program. The Oglala effort emphasizes reunification for children, who have been placed off-reservation, with their biological parents or extended family. A unique feature of the project is the creation of a facility where several sets of parents and children can live together as they receive family reintegration services. The goal is to forge positive bonding among the families being served as a counterforce to certain negative patterns prevalent in the community that families will have to contend with.

Two other non-tribal projects operated by Indian nonprofit organizations received support from state governments. The Minnesota Indian Woman's Resource Center program was funded by the state of Minnesota and Hennepin County and began operating in 1987 in the Twin Cities area. The program serves families in which young children are likely to be placed out-of-home, or families where the children are already in some form of substitute care and there is a belief they can be returned home with appropriate services. Intensive services are provided over an eight-to-twelve week period for either placement prevention or reunification. Approximately eight families are being served at any one time. A two-member team approach is used with families, and both in-home and agency-based services with strong cultural content are delivered.

The Inter-Tribal Council of Michigan, Inc., received funds in 1988 to reduce the Indian population in foster care as part of a statewide family preservation effort. The state of Michigan adopted the Homebuilders Model as the mechanism to keep families together and moved quickly to implement it statewide. The intertribal agency was selected to provide services to Indian families in the Upper Peninsula of Michigan, an area where placement rates were consistently high. Services have been provided to families almost entirely in their homes, and project workers are available to families on a twenty-four hour basis. Consistent with the Homebuilders Model, interventions last approximately four-to-six weeks, followed by referrals to other appropriate services.

A set of six demonstration projects was funded by the federal Office of Human Development Services for two years beginning in October 1988. These projects were expected to demonstrate how to design and implement placement prevention/reunification programs for American Indian and Alaskan Native families having children in care or at-risk of placement due to alcoholism or alcohol abuse by the parents. These half dozen projects were then evaluated under government contract (*Smollar and French*, 1990; *Smollar and Smith*, 1990). The evaluation report provides the basis for the following program descriptions.

The Comanche Tribe of Oklahoma's supported intensive substance abuse treatment services for abusing parents including traditional practices such as cedar smoking and sweat lodges. Non-abusing spouses were helped to deal with family oriented issues such as enabling behaviors and co-dependency. Outpatient care and aftercare were also made available. The family preservation program was not operated by the tribe's Indian Child Welfare program, but required coordinated services between the two different projects. The Confederated Tribes of the Grand Ronde in Oregon employed a family services coordinator who provided case management services as part of a team. In conjunction with tribal government staff from the child welfare and substance abuse projects, the team worked to make sure families received the range of services they needed. The Mississippi Band of Choctaw Indians located in east-central Mississippi offered home-based services to create a safe and healthy environment for children. Educational services for parents included proper housekeeping, child rearing and nutritional practices. Concrete services such as transportation and clothes, ironing boards and washing machines were also made available. The Puyallup Tribe of Tacoma, Washington received funds to serve their own tribal members and members of other tribes living in Pierce County. The project emphasized both direct services and case management referrals for clients to drug and alcohol treatment programs in the area.

The Fairbanks Native Association's effort in Fairbanks, Alaska served an urban population. The project emphasized case management, informal counseling, and a host of related concrete services. Project staff were in the role of coordinating services between clients and diverse service providers, especially in terms of substance abuse treatment. The Indian Health Care Resources Center in Tulsa, Oklahoma adopted a unique approach to serving the urban Indian population in the Tulsa metropolitan area. They established "safe homes" where abusing Native mothers could place their children while they received inpatient services for their substance abuse problems. The rationale behind the approach was that women would be more likely to accept treatment for substance abuse if they didn't fear the loss of their children.

No doubt other family preservation oriented projects are currently being implemented with Native people. It is likely there will be more in the future, especially since the BIA funding announcements for Indian Child Welfare programs have in the past couple of years begun to urge those seeking funds to address the preservation of families.

Cultural Issues Relevant To Implementing Family Preservation

Let's examine a number of cultural factors that should be attended to, if one is interested in implementing a family preservation program in their community. In the course of this discussion, we will see that many of these cultural issues involve perceptions and definitions.

First, it is necessary to come to terms with how placement are perceived in your community. In some communities, children and youth are often placed with some member of the extended family, and that is not seen or viewed as a placement. In other communities, there is a very high rate of out-of-home placement. The situation varies from tribe to tribe and it is important for each community, urban or rural, to come to terms with how it deals with and how if feels about placement. Placement should be defined by the community so it can begin to decide what constitutes placement prevention.

Second, each community must derive suitable and appropriate definitions of "at-risk" and "imminent risk of remove." What will your operational definitions for each be? When removal and placement are the emphasis, the concern is with pulling kids for "no" reasons or the "wrong" reasons. If one's new emphasis is on preventing placement and keeping families together, what will be the "right" reasons for doing so?

Third, the issue of intrusiveness must be addressed. Will the intensive contact and the in-home nature of the service prompt resistance from American Indians and Alaskan Natives? Initial indications from some of the projects cited earlier suggest the answer is no. But, here again, each community must decide that for itself.

An interesting factor has emerged here that is worth mentioning. Many service providers are telling us that often the family looks forward to the attention they are receiving, and the major dilemma is not how to overcome resistance but how to prevent dependency. With family preservation one must consider how to try and stop the family from becoming too dependent on the family based worker.

Fourth, the issue of who exactly is the "family" must be clarified. Clearly dominant culture programs emphasize the parent-child relationship but among native people the extended family cannot, and should not, be ignored. Ideas about who from the extended family needs to be brought in as services are being provided, when exactly this needs to happen, and how to do it, will have to be determined perhaps on a case-by-case basis.

What we hear from some current programs is that they are attempting to recognize who the power brokers and the leaders in the extended family are and involve them at the "right" time.

Fifth, is the issue of workers. Should the staffing consist of Indian or non-Indian workers? What we hear from the projects is that it takes time for even Indian workers to establish the necessary rapport with the family to be effective, but that

Indians should be employed by the family preservation programs.

Sixth, and the final cultural issue worth noting, is considering how to involve elders and others capable of bringing troubled children, youth, adults and families into a spiritual reorientation with their traditions and heritage.

The Implications of Attending to the Family

Family preservation has the potential to respond to some of the consequences of a reliance on child protection and culturally appropriate placement that has dominated the Indian Child Welfare since the passage of the ICWA. There appears to be an increasing recognition among policy makers and practitioners that family preservation services are responsive to the needs of American Indian children, youth, adults, and communities.

Introducing the concept of family preservation to Indian Child Welfare implores all who are concerned with the field to stop, pause, and give some thought to what has transpired since the passage of the ICWA. At the very least, family preservation asks that some attention, thought, and action be shifted away from child protection and placement to placement prevention and the support of families. At most, it is quite possible that family preservation services represent the next major challenge for those who work with American Indian and Alaskan Native children and families.

The field of Indian Child Welfare is encouraged to continue finding effective ways of preserving families and assisting them to become healthy because troubled children most often come from troubled families, and troubled families help sustain troubled communities.

Family preservation, and not culturally appropriate placements, could very well turn out to be a viable response to cultural preservation that prompted the passage of the ICWA. Solutions on how to keep American Indian and Alaskan Native families intact are attainable, but will be expensive to develop and implement. Whether there is the political will and widespread professional commitment awaits to be seen.

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WORKSHOP 3

Joint In-Service Training for Management of Indian Child Welfare Act Cases

(Wednesday, January 15, 1992)

Facilitators: Dale Wares, *Director Indian Child Welfare Program*, School of Social Work, University of Oklahoma and Kenneth Wedel, *Professor*, School of Social Work, University of Oklahoma

Kenneth Wedel: Welcome to our workshop session. I am Ken Wedel and this is Dale Wares, and we are from the University of Oklahoma School of Social Work. It is a great pleasure for us to be here with you today.

Let me just say a couple of words about the title of our workshop and what the content will be, so if you decide that what we will be talking about is not the workshop that you expected to attend, you may go to a more appropriate workshop. Essentially what we will be discussing, is the work that we have been doing in the area of management of Indian Child Welfare programs, from the prospective of what happens when the child hits the system. In particular, the work that we are doing is setting-up in-service training, which will involve both the public system and representatives from Indian Child Welfare programs.

Our emphasis will not be dealing with individual cases of Indian child welfare, or offering in any way, the insights into that. We will be focusing more on the broader perspective of administering program issues related to problems that come up in the field. Some of the issues explored, are the content of the training programs that will be offered, as a result of the work that we have been doing.

If you are looking for more information dealing with individual cases or families, then we will probably not be giving you the kind of information that you are looking for today.

Let me start by saying, that at the University of Oklahoma, for the past few years, we have been looking at the Indian Child Welfare Act (ICWA), the programs resulting from the Act, and the issues, that have been evolving as a result of the ICWA.

Back in 1988, we had a federal grant that looked at very important problems that led to the passage of the ICWA, in terms of social work programs working with and interacting with Indian Child Welfare Programs, as well as the, potential role for social work education. Thus, we focused on two major systems: social work education and Indian child welfare.

One system, included all of the schools of social work in the United States. We asked administrators a series of specific questions about how many students they had, composition of their faculty, and the courses that they are offering with American Indian content, the recruitment activities they were carrying out, the retention policies that they were involved with, and the curricula they may have developed. We then asked specific questions about whether they were offering any course work on the ICWA or Indian child welfare programs. We also asked if they were doing any in-service training or had any involvement with tribes, or other groups and programs in this area. It was a very comprehensive study, and we had, I think, a very good reaction to that. We were able to compile a great deal of information about what programs were doing around the country. And there is a great deal of variation.

We identified, what we called, the high-opportunity social work education programs in this country, that were recruiting American Indian students. They were involved in outreach and working with tribal organizations, in order to field complaints, and so forth.

As a result of that project, we published a guide to social work education. Here is some of the information that tribal leaders may be desirous of. The person who wants to go on into social work education, can talk with us later. We brought a few of those guides along.

We did not come here to report on that research, therefore, I will briefly wrap-up what I am saying here about it, but only to point out that it ties in with what we are currently discussing.

The second part of that earlier study involved a survey of Indian child welfare programs. Some of you, may-in-fact, recall that you provided us with information in that survey. We asked a lot of basic questions. How long had you been on the job? Were you satisfied with the work that you were doing there? What type of degree, background, and training do you have? What in-service training programs have been available to you?

The survey also asked a series of questions about whether or not you were a member of the tribe represented by the Indian child welfare program, in terms of the tribe or tribes, that were being served by the program(s).

We had a very good response to that survey, and we are now in the process of publishing some of those results. A very important thing came out of that study, and this is a point, that I am wanting to get to. We discovered from the survey results and from other studies—including site visits to different programs—that our own knowledge, closely parallels the public child welfare system.

Today, when we say the Indian child welfare programs and the public child welfare programs, what we are really doing, is differentiating the two parallel systems as the Indian child welfare programs, the state or county welfare programs (programs in each of your states are parallel programs). In this instance then, that is the implied meaning of differentiation between the two program systems.

Utilizing that definition as a given, what we found in the information that we collected in an earlier study, is that there are a great number of problems that were being experienced by administrators and practitioners in Indian Child Welfare Programs, and for that matter, in the public sector programs as well.

A case hits the system. What happens to it? Do people work together? Is there joint planning? Do the public workers know about the ICWA? Do the tribes and tribal agencies understand the responsibilities, that the state and county workers would have, as far as the Indian cases, coming before them?

In short, we found that the place where the two parallel systems meet, was an area that little attention and training has been given to. So, we put together an idea involving the development of training, which would bring together the Indian tribal practitioners, supervisors and administrators, which ever they were, and their counterparts in the public sector, which we defined as the public system.

The in-service training opportunities that we will discuss, represent the kinds of issues that are not currently addressed. Second, we need to get the people from the front lines of the two programs enjoined. With this introduction, I will now turn this discussion over to Dale, in terms of the specifics of what we are going to share with you today. Our current project, is developing an approach to training, and some of the other issues that we have been able to discover, as a result of even further survey work and evaluation.

Dale Wares: I am interested in what kind of roles people here are operating in. How many people here are directly in Indian child welfare work? How many of you have been involved in any type of joint in-service training or cross-discipline training with workers from the other systems?

Man: We helped set up a training program, a joint program with the public defender's office, regarding both the Indian tribes and the social services department.

Woman: Washington State has an addendum with the ICWA, that has established an agreement between Washington State and the tribes. That is an extension to the law which defines what the state's role is with the tribes.

Dale: You have a new manual about this thick, too, right? I have a copy of that manual here. We are in the process of doing training around the implementation of that manual. I have looked at a number of state policies and procedures, and you have a bigger manual on the ICWA, than most states generally have on policies and procedures.

Woman: The tribes on the west coast of Washington are all using it, and it is really helping a lot of children that are in the system.

Dale: You all have worked on that for how long, ten years or so?

Woman: At least.

Dale: I read a bit of the history. Another question I am interested in is, what states are represented here today? To start off, who is from California? What other states are represented?

Responses: Arizona; Alaska; New Mexico; Montana; and Alabama.

Dale: We are targeting five states for this project. We picked five states with the highest Indian populations, and we are going to be working in Arizona, New Mexico, Oklahoma, California and the State of Washington. Ray Bending is our liaison in Washington. Actually, in California, we will work with Kevin Sanders. Originally, we were working with the University of California, Berkeley, and we had some problems there. The person who was assisting us got sick, and Kevin stepped in and took over. In New Mexico, it is Pat Shannon. In Oklahoma, it is Carol Bridges at East Central Oklahoma University, and it is Edward Gonzales-Santi at Arizona State University.

What they are doing is coordinating an advisory body. We asked them to set up an advisory body that is mixed with state and Indian child welfare representatives and throughout this process—this is a two year grant—they review the various stages in this process, give us feedback, and will later assist us in setting-up the training sessions. We are going to have a planning meeting, at the end of the month, with all of the people from various states. We will also discuss how we are going to structure the training, where we are going to deliver it, and who is going to be invited—some of those details.

If you have questions, please feel free to jump in. This is fairly casual workshop, it is much easier, if you ask questions and we talk about it as we go along. Besides, it is a lot more interesting, too!

Ken: One other question, is about what we have discussed so far, are any of you members of the advisory committees on those states that we identified? California and Washington State, would be the most likely.

Man: My tribe just received the Arizona State University (ASU) grant to do the study with Allison Lewis. Santeen is also involved in that project with us, I'm not sure if that is the same type of project that you are discussing now. Although, we were told that our tribe was picked to be a pilot-project for the rest of the tribes in the country.

Ken: The way we have contracted training sessions, is that we will go into each state, and deliver four days of in-service training. I will talk a little bit about the curriculum as I go along. The advisory bodies will help tailor the curriculum for the each state's needs.

The first thing we did was perform was a needs assessment, we looked at what are possibly some of the problem areas that people experience when children come into the system, and to pinpoint specifically where children fall under the auspices of the ICWA. I have talked to Cecilia and some of you in California. I also had students interview people in the other states; we tried to get ten Indian child welfare programs and ten state program representatives, as our sample in each state.

We developed this instrument. This is the first page of what we ended up with, it was done as a telephone survey. When we pitched this grant, we were originally going to do a mail survey. We had done a mass survey on our previous grant. With mail surveys you get at best a 50 percent response rate. It takes at least three months to get the survey's back; then you have to harass people, you keep writing them, pleading with them to please send the survey back. So we decided to try doing a telephone survey. We talked to our grant officer at the Department of Health and Human Services (DHHS) regional office. We thought we could administer the project for a little more money than the previous grant. We felt that we would get a far better response utilizing a telephone survey. Furthermore, that would give us the opportunity to talk to people directly, and get a little more of a feel for what is going on in each of the individual states. So, we kind of looked at what we knew to be each of the problem areas around the implementation of the ICWA. Areas such as, determination of tribal membership, notification, foster care, and the relationship between state and tribal workers. We put together a whole list of questions, and worked with Three Feathers Associates, a Norman, Oklahoma-based firm, that does quite a bit of training in Indian child welfare, Headstart, etcetera.

We refined the instrument through several drafts, and ended up with a semi-final draft which was sent off to the states. Their advisory bodies met, they reviewed the instrument, and gave us some real good feedback. Subsequently, we refined the instrument a bit more, and made a few changes in order, and wording, and we ended up with an instrument that was approximately nine pages.

Our goal was to keep the assessment instrument under twenty minutes to administer and complete. If you are going to talk to child welfare workers—I spent eight-years doing child welfare work—I never had time to really spend five minutes talking to somebody on the phone, so I figured that I could probably con people for twenty minutes. We actually kept pretty close to that time limit. We tested it to see if we could actually administer it in twenty minutes, and with the exception of a few people that really wanted to talk, we essentially kept it under twenty minutes. We could usually complete the survey in approximately fifteen minutes. Some people really were interested. The survey brought up a lot of questions, and they really wanted to talk about some of the issues it brought up, so we were on the phone, in some cases, as long as forty-five minutes. But if somebody just wanted to take care of answering the questions and getting off the phone and return back to their jobs, we could complete the survey in twenty minutes or under.

After we finalized the survey questionnaire, we recruited a couple students to work for us. My staff was comprised of two Indian students, a faculty member and a recent graduate. We had two Indians and two non-Indians on the survey team. We went through a fairly brief training, which was followed by the actual conduction of the survey. We picked programs, in Oklahoma, that were not in the target area for the survey team to practice on. Although, the respondents were not told that they were being practiced on. Once they completed that task, then each interviewer was assigned a state. From that point on, they only conducted interviews in that state. They interviewed both the Indian programs and the state programs.

The manner in which we coordinated our sample, was by taking the BIA list of 1990 ICWA programs that were funded. We sat down with a map and marked which counties those programs were located in, and then selected the county that we would use for our state sample. We picked ten programs in each state. We matched the Indian child welfare program with the county program, and then interviewed people from each program. We felt as that gave us a good sample, representative of both sides of the picture. For example, I interviewed Cecilia in L.A. County. I also interviewed a representative of the Indian Child and Family Program in Orange County. So, we got the state view, as well as, the Indian view of the same area. We probably got a fairly rosy picture of the way things really are, because in most cases, I felt like we ended up talking to people that were both committed and pretty interested in the ICWA—people who really wanted the Act to work concurrently on the state side and on the Indian side.

I know, that there are counties outside of areas where major Indian populations inhabit, that may see one Indian child welfare case a year, unfortunately, many caseworkers in these areas, do not really care or they are not real interested. That is a problem, but I feel like our best efforts should be focusing on the areas where large Indian populations are located, and where Indian children who are affected by the ICWA are most likely to come into the system. Sometimes, because of the scope of issues such as Indian child welfare, you have to make some trade-offs along the way. Unfortunately, it is always an imperfect system.

We compiled a list of one hundred names. In many cases, we had actual names, sometimes, those people were not always there, but at least, we started out with a name or the phone number of the county program. We would then call and try to locate somebody that would talk to us. Mostly, we tried to talk to supervisors, because we felt like they would be more knowledgeable, than the line workers who typically had not been on the job as long.

Did any of you all participate in that? I know Cecilia did. Who else was interviewed? How did that go? Did anybody offend you or anything?

The amazing thing was, is that we got a sample of one-hundred-seven responses. We initially started out shooting for a sample of one hundred. We completed the in two weeks, thus, the telephone survey was an amazing improvement over the prior mail survey that we did. It really convinced me that telephone surveys are the way to go, if you want quick results and want to cover a lot of ground fast. We also got, I think, some really good feedback by talking directly to people in person or on the phone.

Then we entered the data in the computer; this is not really a scientific survey. We were not trying to do research that would be publishable. What we were trying to do was get a feel for what the problems were, and where the curriculum should be focused. So basically, we just analyzed the results for mean response. Primarily, the purpose of this first question is to give people a chance to respond to something that is not real difficult. Which of the following are problem areas regarding Indian child welfare cases? Please respond yes or no.

To begin with, you want to give people something that is fairly easy to answer. Initially, you don't want to ask them what are the biggest problems that they face in the implementing the ICWA in their jurisdiction? This is a garbage can. In retrospect, we probably could have thrown out about half of those responses, and still accomplished the same thing. By the time you get half way through the list, people have forgotten what the original question was, so we often had to remind them, and then go back and ask, is this a problem? Is implementation a problem? Do you have trouble with extended legal battles in implementation of the ICWA?

As you proceed through the instrument, some of the other questions, for example, we were trying to kind of get at some of the emotional issues. One question we asked was, how often are tribes notified when Indian children are taken into custody? Would you say they are: almost always, sometimes, or almost never notified? Then, we looked at both the state worker's response and the Indian worker's response to that question. If the state worker answered, "Almost always," and the Indian worker (in the same area) said, "Almost never," there is a problem in that area. The Act is not working too well, because one side sees things very differently.

We asked people what the average length of stay for Indian children in foster care was, one year, less than one year, one to two years, or more than two years. Now, again we are looking at whether one side has a very different perspective than the other side. Did the state worker say, "Less than one year," and the Indian worker said, "More than three years." Again, that would imply that one side is seeing things very differently. That is one definition of how we detected problems.

We analyzed responses in three different ways. First, if there was a consensual agreement amongst respondents that indicated that there was a problem, then the data is obvious. For instance, if eighty-ninety percent of respondents from both groups said tribal notification was a problem, then obviously, it is a problem.

The second indication of a problem area was, if the responses from each side were in opposition. That is, if the two groups' perspective are divergent.

Lastly, the third indication was at the end of the survey, when we asked three open-ended questions. They were, what is the greatest training need for tribal workers? We asked both groups that question. We also asked, what is the greatest training need for state workers regarding the ICWA? And finally, is there anything else that you see, as a major training need with regard to Indian child welfare cases in your state?

In many ways, those questions were certainly the most fun to look at, because we got real, sometimes, rather blatant responses to those questions. But it gave us more of an emotional feel for what was going on in that area, than the yes/no questions. It is hard to get emotionally involved in yes and no questions.

So we implemented that analysis for each of the individual states. We came up with a series of results, which we initially analyzed for all the states.

The first thing we looked at was entering the yes/no questions or the multiple-choice questions into the computer. Through a number of distillations, we ended up with what we considered to basically be five areas that the results indicated as problem areas. One area is the notification process, and anything involved in that area, whether it is in determining whether the child is an Indian; finding out who to contact once you have determined that you have custody of an Indian child; where to send the notice; whether or not the tribe responds or what their response is; and whether or not the tribe is clear about what they want to do. Like I said before, this information is inclusive of all five states, because we are trying to get an overall sense of how the curriculum should be developed.

Another problem area was cross-cultural issues. Issues such as, how sensitive is the state worker to the Indian culture; do they understand the particular skills that are necessary to work with the Indian families; and, are the resources available to provide treatment planning for Indian families in your area? One of the issues was very apparent, was that the Indian workers felt that the state workers did not have the foggiest idea about how tribal governments work, how their programs are structured, or what the constraints that they operate under are.

On the other hand, the state workers felt like the Indian workers did not have any idea about the mandates that they had to deal with; the heavy case loads; and all of the policies and procedures that they had to follow. So neither side felt as though the other side understood their respective systems. Thus, we lumped those issues into the cross-cultural category.

When I started out, I really hoped that we could get through this without having to do training on the ICWA, but everybody felt that training on the ICWA was a necessity. So, we ended up with a component on the ICWA.

There is also need for more relationship building; understanding state versus tribal worker responsibilities; how the systems function; and finally a segment on legal issues, including information which explains what the responsibilities of tribal courts, state courts, and Code of Federal Regulations (CFR) courts are. Also, issues like sovereignty and jurisdiction need further explication. This is a fairly broad area but there are a number of problems that got lumped into the legal issues section.

We also looked at the open-ended questions. I will show you some actual responses to those, in order for you to get a sense of the responses that we received on those questions.

We did a content analysis, where somebody goes through and looks at all of the responses. We came up with fifteen categories that encompassed the responses to the open-ended questions, and then we analyzed that data. These are the problem areas, in descending order of importance.

The number one issue was in the area of professional training and screening of staff. This response came primarily from the state workers saying, "That the tribal workers needed more professional training in basic social work practice skills, such as, communication in the development of interviewing skills, case management, assessment, and evaluation."

The second issue was further development and knowledge and understanding of the ICWA. Again, this response mirrors the responses that we received to the closed-ended questions. People felt that there were still people that do not thoroughly understand the ICWA, thirteen years after enactment.

Cultural sensitivity also came up again. You are seeing the same complaints and issues brought up in the evaluation of both the responses to the open-ended and close-ended questions. There is a need for more networking, coordination, understanding of state systems, understanding of tribal governments, and legal issues.

So, five of the six items that appeared on the close-ended questions, appeared on the open-ended questions as well, which is kind of nice. It is nice to get results in two different ways, and have them support each other.

Now this is the first question, "How often are tribes notified when Indian children are taken into custody?" I did this because, I thought that there would be people from California that might be interested in seeing how California responses compared to responses from other states. On these items, what I call the "garbage can question," the percentages are the percent of respondents. The first column is all the percentages of the Indian child welfare respondents for all five states. Next to that, is the California Indian child welfare respondents, all state respondents, all county, and the California county respondents.

It is very interesting to look at these responses, because you begin to see where state differences come into play. Obviously, in notification, there was a big difference between how the California county workers and how the California Indian child welfare workers viewed that problem. One-hundred percent of the California Indian child welfare workers said, "We have a problem with notification." The county worker's response is fairly high to this question, there is almost a forty percent gap between the way one group saw it, and the way another group saw it. You also see variations between all state groups—twice as many in California saw it as a problem, than in the five state sample. So California notification is a problem. Those of you that work in California, I would assume know that.

Dale: Expert witnesses was another category that really showed up in California. Fifty percent of the state workers, and eighty-six percent of the Indian child welfare workers referenced this. The problems seem to be in, deciding who is qualified to testify as an expert witness; and how did they get to be an expert witness? In other states, some of the state workers could not understand why they were not considered an expert witness under the ICWA.

Legal battles. Again, far more people in California, see problems with extended legal battles under the Act. There is a real high percentage of misinterpretation of the ICWA, for both state and tribal workers, in this area. However, the tribal workers in California, find more of a problem with relationships between tribal and state workers.

It seems to me, that in California, one of the problems as opposed to the other states that we surveyed, is the population of Indians in relation to the total state population. In Oklahoma, Indians comprise eight percent of the population. According to the last census, in California, Indians comprise less than one percent of the population. Although there is a large number of Indians in California, they are relatively, a very small minority. As a result, it is harder to get people to pay attention to the needs of Indians.

Foster care. People always mentioned foster care as a problem area, although we did not define that area very clearly, because we did not focus on the specific elements of foster care. Presumably, the problems stem primarily from children who need foster care, and the lack of Indian foster homes—hose types of issues.

Here are some of the comments that we got when we asked both groups of workers, "What is the greatest training need for tribal workers," County workers, as I said, mentioned, "They would like the Indian workers to better understand the needs and the responsibilities, that they have to function under. County workers said that the Indian workers, "Needed more training in basic skills." They also mentioned that, "Indian workers could improve their skills in working better with them."

Indian child welfare respondents in California said things like, "We need training in the development of social services; how do we develop a social service program; and I need more technical knowledge." They also cited that they needed further education in order to facilitate a better understanding of legal codes and the legal system. Other responses such as, "How do I work the system to my client's advantage," was common. Again, these issues goes back to the need for basic social work skills. These respondents also cited the need to know how to implement the ICWA as another area that needed further development. Surveying California's open-ended responses, showed that approximately half of the Indian child welfare respondents mentioned the ICWA as a problem area.

We rephrased the same question, this time, asking Indian respondents, "What area state workers need further training in?" Thus, we gave both sides the opportunity to voice complaints about one another. County workers said, "That they needed assistance with procedures such as, the identification of Indian children." One of the statements, that I often heard, particularly in California, when we asked people, "Does your state have a policy procedure for determining Indian status?, was 'Yes, but the state does not follow it.'"

The county workers seemed to feel like they needed more training in how to determine Indian status, how to follow the placement preferences. How to notify tribes. One of the problems, it seemed to me, was that people did not quite know how to contact tribes, and I think that may be a problem that is true in most states. With five hundred tribes, state workers are going to have trouble knowing how to get in touch with all the different tribes.

I know in the Washington manual, there is a list of all five hundred tribes and tribal addresses, which we will hand out in our training workshops. It is hard to know who to access, people seem to think that it is okay to contact the BIA. Which is what happened, instead of trying to find the Indian child welfare worker for the tribe and talking to them.

A number of people seemed to think that it got passed along to Kevin Sanders. There were too many things for Kevin to respond to, thus, it moved a little more slowly than it would have, if the state or county worker had contacted the tribe directly.

They did not know how to apply the Act in practice. Over and over again we kept hearing, "We need more training in the ICWA." The county workers also felt that they needed more of an understanding of Indian tribes, Indian families, Indian parenting, child care practices, etcetera.

The responses of Indian child welfare workers mirrored these sentiments, although they said it in a different way. Again, they cited notification, placement preferences, and how to identify Indian children as areas needing improvement or further training. Actually, both of these groups' responses are real close. Both sides saw it the same way, there is the same group of needs. There was not any defensiveness on the county workers part, they pretty much, I think, saw what their needs were, the same way that the tribal workers did.

Now occasionally you do get some hostile responses. For example, one response I'll throw in, because you all know that goes on is, "This is a hopeless case!" In another state, I had a state worker that actually said, "Indians need to pay more attention to time." I was amazed that someone would be quite that blunt.

The last question that we threw in to elicit a response was, "Is there anything else that you see as a major training need?" I did some editing compiling these responses, because approximately half of the responses that we got, did not deal with training needs, whatsoever. This was an opportunity for people to complain, voice their concerns, or just talk, so we got a lot of comments that really did not have anything to do with training.

Dale: A common response was that the state needs to hire Indian workers in ICWA work. That did not really have anything to do with training. It was more of an editorial comment.

The response on reservation training is that, we *do not have* reservation training or have tribal locations. Among the things they said, "Tribes need to be able to respond more quickly, they need to let us know who is or who is not a tribal member." State workers would like to see the BIA more actively involved, more of a resource instead of a hindrance. California, is a big state, and there are a lot of tribes. I am sure that there is a lot of work, in terms of tracking down who is or is not a tribal member, and it lands on Kevin Sanders' desk—and he is only one person.

Everyone needs more training on the evolution of victimization and empowerment. Another response was, "How can we recruit more Indian foster families." An interesting comment. Many felt that the tribal leaders needed to be trained in the value of the ICWA, and how it can be used for the tribes' benefit. Apparently, there is feeling that the tribal leaders really do not recognize the utility of the Act, and how important it is for the tribe.

I was surprised that an Indian child welfare worker would respond that we need more culturally relevant training. Now that was one of the questions we asked in the survey. First, we asked, "What do you know about Indian culture?" Something along that line. And then we asked, something like, "Do you feel a need for culturally relevant training?" Interestingly enough, representatives of both groups pretty strongly said, "They felt the need for more cross-cultural training."

Again, we would like to have training on the reservation. This goes back to training on the history of Act, why we have the Act, why we need the Act. A reiteration of that. It is crucial that everyone has a working knowledge of the requirement responsibilities of the opposing system. That came through pretty strongly. Over and over again, that was stated. Both groups stated the need to know more about the other side, and their philosophical world view.

We took that information, and put it in the hopper, and came up with a set of proposed curriculum modules, which we distilled even further. We tried to cover the basic five areas, which included, the ICWA, legal issues, cross-cultural skills, relationships between state and tribal workers, and case planning.

Well, basically we initially came up with the proposed module. We sent the raw data from the survey out to the state's advisory committees. I calculated the percentage responses from the survey in each area, and sent that to the states. I also sent them a list of all the unedited comments we received in that state, from the open-ended questions, etcetera. I just listed them all and sent them.

The advisory committees then met and reviewed that list. We asked them to review that data and respond to what they saw as the major areas that their state needed training in. We also asked them what kind of training modules they would they like to see come out of this survey. So, all five states did that, and their respondents sent it back to us. We got together and looked over the data that we received. From that, we came up with five modules that seemed to cover as many of the concerns that we felt that we could address.

The one comment that did not appear was direct practice skills. We felt like that was really beyond the scope of this project. What we are primarily looking at, is trying to help the two groups get together and learn how to work better together. Direct practice skills, while important, really seem beyond the scope of this project. We felt like there were other ways that issue could be addressed.

With the breadth of the problems that appeared, we felt that what was needed was curriculum and training that focused on learning how to work better, more effective relationship skills, building relationships, and getting people involved in joint training. We felt that talking about some of these issues would really be more productive, than actually trying to teach assessment and planning skills. Those kind of skills that are more oriented towards basic child welfare skills.

At this point, we have an outline of the curriculum, and we have some basic materials put together. We are also getting ready to send the outlines of the curriculum back to the states for review. We are having a state planning meeting at the end of this month, where we will discuss with representatives from each state what we have in terms of curriculum modules, how they can go back to their advisory committees and discuss this information with them. Then we can decide on how we want to structure the training.

We have tried to develop a three to four days training workshop. We are committed to provide four days of training in each state, which we originally conceptualized, as being two workshops in different locations, so that we could cover different areas of the state.

Washington had implemented a project similar to this. What they developed was ten or twelve days of training which involved approximately sixty workers—half Indian child welfare and half state. Then they leapfrogged across the state. One of the ways that they addressed some of the problems, with one side not knowing what the other was doing, is that one training would be at a state or county office. The next training would be at a tribal complex, so the group's actually got together in each other's locations for training. Therefore, people were actually exposed to work locations.

I have been re-thinking this. Maybe we should consider providing two, two-day workshops in each state, and doing the same material twice, giving the state's the option of putting together four days of training, that would be offered in different locations. That is kind of up in the air. I cannot tell you exactly what we are going to do yet, because that is going to be evolving over the next couple of months, when we finalize what the actual curriculum.

The basic curriculum foundation will be developed around these five modules. The trainers will be from Three Feathers Associates, they dare a group that provides training and technical assistance in Indian child welfare, Headstart, and aging. We think it is important to have Indian trainers leading these sessions.

I will be involved, as both a gofer and as a support person, rather than actually doing the training. However, we will be working closely with Three Feathers, but they will actually be the trainers that will deliver the onsite training.

Some of the training components will also utilize local resources. In discussing the different systems, we will employ a representative of the state child welfare program to talk about each state's particular policies and procedures, what guides their work, and what kinds of responsibilities state workers operate under. We will also have a representative from the Indian child welfare program to discuss their program. By including the voices of these representatives, we will try to add some local flavor to the training sessions.

Woman: I wonder, did you think about each state—I know you are going to use Three Feathers—but did you think about getting people from each state to do the training?

Dale: Well, we will talk about that at this planning meeting in a couple of weeks. We have talked in the past about how to do that. From the beginning, we have been committed to using Three Feathers. We are going to try, wherever possible, to use local resources, if we can—given the constraints of trying to work in five different states.

My office is a one person office and it is hard to coordinate all of these training workshops on the local level, although I agree with what you are saying. The more that we can build in some kind of local resources, local expertise, I think that, as much as possible, we will try and do that.

Three Feathers has done a lot of training on the ICWA. I have pretty much left that training component to them. I have not developed any new materials. As much as possible, we have tried to adapt other materials rather than trying to create something from scratch, because there is a lot of this information that has already been done.

In the area of legal issues, we have a student that is working on designing a module on tribal governments. There is a new book out by Sharon O'Brien that covers the history of tribal governments—the current manifestations. We will have a component that examines the ways in which different tribal governments operate. We will also cover some of the basic issues such as sovereignty, jurisdiction, Indian courts, and state courts.

The term Indian courts encompasses a broad range of legal institutions which most state workers do not know much about. Many people have never been in an Indian court, and do not know the difference between a CFR court and a traditional court. I think that the differences between the two are fairly interesting. Some of the legal issues may sound dry, but some aspects can be very exciting. There is information that most people do not know about. I bet that out of one-hundred people, there is not one White person, who could explain what sovereignty is. However, sovereignty is an issue that is real close and dear to American Indian people.

We are developing the child welfare multicultural module from scratch, although we are including materials from the Northwest Indian Child Welfare Institute, and from Terry Cross's materials. I have also included materials that I have collected on this area. The approach that we are taking is that conceptually "family" is something that all cultures share. Therefore, we are trying to look at how we are alike, rather than how we are different. From that point, we will be discussing some of the specific aspects of Indian culture. This is where it will be helpful if a locale representative, a spiritual leader, or a tribal leader will lead the training. It is important to include as much information about the local tribes.

I am very interested in receiving your input on all of this. Part of why I came here today was, not to tell you what wonderful things we are doing, but to have you give me input on what *needs* to be done. I also want some feedback from you all. By any means, I do not see myself as an expert in this area, like you, I am learning as I go along.

Woman: One stumbling block that I have run into—I have just started working for the Indian child welfare in November—and one problem we have right now, is a inter-state-placement, going into another state court and trying to get another state to respond.

Dale: What is that called? It is called Inter-State Compact. I know when I was working as a line worker, having a case that was not in my county, was a nightmare. Having a case that was in another state was just out of the realm of reason. One of the sticky points, and one that we have no intention of addressing, are the judges. One of the complaints that came up in the needs assessment, was the need to train judges and lawyers. Well, we have enough problems trying to manage child welfare, let alone trying to take on the legal profession. But it is definitely an area that needs improvement.

Cecilia Fire Thunder: In San Diego—we just rocked our Juvenile Court and the county counsel it represents—we brought them into the process. We took them on a tour of the reservation, so they can get in touch with the different organizations. As a result, they have designated three judges—one judge and two referees—who will be judging these cases in order to develop a knowledge base within both the court system, and with the county hospital. We have four lawyers who will handle Indian cases period. This will enable them to develop a knowledge base and cultural sensitivity within the court system. This is what the head judge wanted in our program. Considering the shape they were in three years ago, things are much better in our system now.

Woman: Dale, I was just wondering, if you are doing this for supervisors? That is who you were focusing on, right?

Dale: That is who we interviewed.

Woman: I am sitting here thinking, as you are talking, that I can think of several line workers who are not thoroughly informed on ICWA regulations, and I do not know if this information will get to them. However, we had a case in Sacramento County, five of us went up and talked to this lady about this one case. She was saying, "Well, how can I identify Indian cases?" We said, "Well, by asking a simple question when someone comes in, such as, 'Are you Indian?'" Then, we asked if she would do that, and she said, "No, I will not do that." She just blatantly told us, she will not ask that question.

Dale: But isn't that question on the California intake form? That is what a number of people have told me, that the first question on the intake form is, "Are you an American Indian?"

Woman: Right, and this lady has told us that she will not ask that question.

Woman: It is on the form in Stanislaus County, but I am a court officer and I get my cases directly from the emergency room (ER) workers, and nine times out of ten they have not asked about Indian ancestry. It is left to me to ask.

Dale: I do not have any answers for that.

Woman: I am just saying, that I think it comes down to an individual, personal, responsibility that we all must take time to make sure that the question is asked in each case.

Dale: That reminds me of a story that one of our students was telling me. He was working in an alcohol treatment unit where he is a supervisor. He had instructed all of his intake workers to ask the people applying for admission to the alcohol treatment unit, what their cultural identification is. He said that he was interviewing a man who was obviously Black, and he said, "Well, I tell my workers they have to ask this question," so I asked, "What ethnicity do you identify with—Black, American Indian, whatever?

Well, it turned out he was a Choctaw Freedman, he was indeed a member of an Indian tribe. Many people do not understand that all Indians do not have black hair and dark eyes. It is a continuing battle to get people to recognize that Indians may look like anybody else.

Woman: Well, right, and that is, what I think she is saying about these children. Well, they do not look Indian.

Dale: There is no way to know the answer, unless you ask the question, which is why it is really important to ask the question.

Man: We have to ask them the question?

Dale: Well, in California it is on the intake form. Many of the states that I am familiar, with have incorporated that question, in order to socialize the workers to recognize that asking that question is part of their job. The ICWA requires that you determine ethnic affiliation, because the Act is to be invoked immediately, if the child is an Indian. That is where the biggest out is for the state programs. They choose not to figure out whether the child is Indian, because it is the easiest thing to ignore. The easiest way to avoid invoking the ICWA, is to never ask the question. So, that is where the States' responsibility really lays in getting their workers to ask the question.

Man: Is that something that you can do? Can we get state workers to ask the question.

Dale: In general, part of the purpose of this component is to get people to know more about Indians. To understand what is Indian culture. The other thing, that white people do not know, is that Indians never call themselves Indians. If you ask an Indian person, what are you? Chances are, they are going to tell you that they are Kiowa, Cherokee, Sioux, Navajo, Apache, Comanche, etcetera. For the most part, they are not going to say I am an American Indian.

Ken: Another important point, is that this information is very helpful to us, and I think helps alert us to some of the issues that we either may or may not come up. It is an incremental process, but sometimes the incremental process works, it eventually sets the stage for improvement. But, I think, the extent that we can identify this issue, if we can end up saying, as a result of the training sessions in these five states, we will be taking more notes, and in our final report, we can definitively say, "Well, we have done the training, but that 'issue' is certainly a lingering problem."

The evidence indicates that it is very scattered, as to whether or not, the state or public workers are identifying, or asking the appropriate questions when an Indian child is coming into the system.

Well, when we make our final report to the federal government responding to this, I think we can underline that problem and say, here is something that should be considered for future concerns and so on. We may not have any great answers, because in our governmental system, it is difficult to force states to adhere to any regulations. But certainly, we are giving governmental officials pertinent information that we are unearthing. They have got some evidence, and again, while that information is crucial, it does not force anything to transpire—it does not force the system to change. After all, I think that we feel that at least, we will do everything in our power to identify what seem to be real impediments to make this program work.

After the twelfth to thirteenth year of implementation, it is expected that there are still problems, in terms of, implementing the ICWA. But by the same token, you would think that in the five states that we are dealing with, which are five of the top ten states having American Indian populations in the country, that these issues would be addressed, and that there would be some real progress being made.

As part of the survey process, we approached each state, whether or not they had anybody at the state government level, who was responsible for coordinating the states' Indian child welfare program. There are a few states, which have active programs, with the ability of influencing people at lower levels of the government. However, some states pay very little attention to the Indian child welfare program. So, there is some variation amongst the states.

Woman: We went to a training workshop in Sacramento a few months ago, where there were two ICWA presentation. Jackie did one of them, and she did a very good job. Then, Loretta, another lady, and myself went to the other presentation. The woman who gave that presentation was an attorney for the state. He began, "Well, last week, I was the ICWA representative, however, my job just changed, and all that information is gone." She had a whole meeting full of California State workers, and that was how she dealt with the issue. We wrote letters of complaint, because obviously, implementation of the ICWA, meant nothing to her. Her lack of interest sent the message to other state workers, "Well, what is the importance of implementing the ICWA?"

Dale: Originally, we pitched this. You do things to get grants funded. One of the issues that the federal government and the DHHS, wants addressed is, how to deal with turnover. How are you going to make sure that the people you train are still going to be on the job? Turnover rates for supervisors is much lower than for the line workers. So, that was how we argued that issue. By focusing on supervisors, it meant that there would be a trickle down of information. Essentially, supervisors could turn around and serve as trainers to the line workers. Hopefully, there would be fewer turnovers.

In our home, Oklahoma, the state training director says, "Listen, our supervisors are lousy trainers. We would rather have our workers involved in the training." Thus, we completely skip the supervisors.

Dale: Basically she replied, "I do not agree with that way of doing it, and we would have much rather decide who we send to the training." I think that is what we will leave it up to. We will offer the training in a given area, taking a specified number of participants, and we will let the Indian child welfare workers, in the state and county programs in that area, decide who they are going to send.

Woman: Will there be only one training session per state?

Dale: We are committed to delivering four days of training. Now how the states decide what to include—what we are asking is that they take these modules and customize the training to the state's needs. California has said that notification is a big area of concern. Then, perhaps, they really need workshops that deal with notification and the determination of Indian status when the Act is invoked.

Ken: Let me make another point. Sometimes the most important influence that you can have on a system is by taking a more subtle approach. Many of you know that, because you work in an environment—if you go in like gangbusters and tell people that you are going to do things like this, this is what you need to know—you might get the opposite results of what you initially expected. It is important to be able to not only wield Influence but to work with people, with bureaucracies, and with organizations.

Part of our philosophy, in regard to the methodology of these training modules, is that they are concrete. The training sessions are what we hope will extend well beyond the initial sessions. In other words, as a result of this project, if these modules are utilized and customized for each state, then hopefully, the states themselves will take the initiative to say, "We need to do more work in regard to the ICWA, we need to hold more training sessions." Our program is very limited, perhaps, we can influence the system by implementing a training module that can be adapted for each state's specific needs.

There is another element to our grant that we have not mentioned yet. We are still working on it, because it is the most difficult part. I will just say one little brief word about it. We also promised that we would be developing some model manual material. Of course, that would be model manual material for all of the states. That is a pretty monumental task.

Washington State is doing some pretty innovative work which all of the states should consider. I mean, we are looking at manual material from around the country, and we are trying to pull together what seems to be the best methodology and practices. This will enable us to show the states, "Well, look, here is some stuff that is on the cutting edge, you might want to consider this information pertinent." That is another element that we hope will come out of this project.

Woman: One benefit of what you are doing, is that if you find certain problems, such as, the workers do not identify or do not ask the question, "Is this child a American Indian," that is when you turn that information over to the federal government, and possibly to the state government. Those issues can then become compliance questions. If this is a compliance issue, when the program is audited, the auditor can make a notation in his or her report, that the agency is not asking questions that should have been asked. If the question is not being asked, then, the agency gets reprimanded for that, and they in turn, will have to make sure that their workers comply with the required procedures.

Thus, it becomes a problem [illegible] that individual county, so, the work that you are doing may be *very* beneficial—not only for requiring the ethnicity question to be asked, but for the enforcement of other ICWA compliance issues—I think that is good.

Woman: The other thing, and I know you cannot do this, but because I work in an urban program in California, I would be interested in the differences between the responses from Northern California and from Southern California.

Dale: One of the things that happened. We were committed to do two days of training. Well, we got some funds freed up, and we then decided that first of all, two days is a ridiculously small amount of training. But when we got extra funds, we immediately committed them to doing more training in each state. What we wanted to do was to hit different geographic areas.

One of the problems you run into—all of you employed in Indian child welfare programs working on $50,000, $60,000, $70,000 a year—there is not a lot of travel money in that limited budget. We want to make this information accessible to as many people as possible. As a university employee, our goal is to always travel to exotic places. We do not know why we did not go to Alaska, we really should have.

Woman: I do not know how much you know about this, but maybe more than I do. But my concern is that we need something in California, where you come in and do a long training session, and then hopefully, the state will do further training. However, in California, they are cutting everything, there is little money for training.

Thus, I wondered if you had considered coming to various areas using the "train the trainer angle." This is when you actually teach the supervisors or whoever comes to your training, how to train the people or the agencies they go back to, so that we can that we can exchange information in that way.

Dale: The federal government is really encouraging grant projects, particularly resource centers, the National Resource Center on Child Welfare, and the Administration of Child Welfare. They are really pushing them to be self-sufficient. So, they are supposed to sell everything. I feel like I am getting money from the government to develop this, and that it is coming out of tax money, so the information should be available to everybody. The materials that we have developed, on this grant and on the last grant, should belong to everybody. The curriculum will be available to anybody that wants it, as far as I am concerned—anyone that would like to go back and utilize the information.

Ken: We hope that there will be people who will be at a trainer level or have influence in the training area involved. However, we purposely did not design this to be a trainer of trainers workshop, per se. We wanted to go into the program level and create paralleling systems, Indian child welfare programs within both the state or county systems.

I have been looking at welfare issues my entire professional career; I come from a public welfare background. In fact, I have worked in a state, where there is a county system which eventually determined, that it would be much wiser to go to the state model.

It is no secret, that if you are looking at all areas of public welfare in this country, two states stand out as the most difficult. Unfortunately, it happens to be California and New York. To influence an issue in the California and New York systems, is a task that very few people have been able to manage.

So, that is a special kind of challenge, but by working through an advisory committee or advisory group, we felt as though the people who would be attending the training sessions—the recruiting that they would be doing at the local level, bringing folks to those sessions—would be a local decision.

As Dale mentioned, we will have one more meeting with our contact people in Oklahoma. This will be the subject of further discussion. In fact, we will relay your comments back, when we meet later this month with those people. We are certainly mindful of the fact that training is going to be curtailed just about every place, because of issues such as transportation, staff layoffs, and so on. The next couple of years looks rough all the way around, so there will be some real constraints to deal with.

Dale: A positive aspect of this, with the exception of California, is that we are working with the social work schools in each state. We are also working with social work schools that have been identified by past research, as being sensitive to Indian issues. That is, they train many Indian social workers. These particular schools are very aggressive at the recruitment and retention of Indian students in their social work programs.

We are trying to develop a network of social work schools that are interested and involved in Indian issues. We hope to continue developing that network in the future.

Ken: Kind of a multiplier effect, if you will, being a social work educator myself. I feel like the social work schools can play a major role in trying to see that something happens in these areas. I would hope, that in the future, that you folks can expect to rely even more on these schools to play an active role in your respective areas.

Child welfare is a traditional, critical area of social work practice. Schools of social work throughout the country have had a major stake, and I think it should be stimulated even further, in the ICWA and the various Indian child welfare programs.

Dale: Is there anyone here today who is contemplating going for a social work degree? Is there anybody considering applying to a social work program? Do you want a guide to social work education? We developed this little booklet which profiles approximately fifty social work programs that have Indians students enrolled in their programs, and for the most part, are working better with Indian students than most programs.

Let me talk a little bit about—his is something I stole from Dan Edwards' *The Historical Review of Federal Indian Policy*. Dan is going to talk tomorrow morning. He is the keynote speaker

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on substance abuse. He has done this two page review of federal Indian policy. The review highlights the nature of federal Indian policy, and how the government has vacillated between an assimilationist and termination stance. It begins with genocide as the stated policy, I think it is real helpful for non-Indian workers in particular to be exposed to this historical information. Exposure to this information, sensitizes the workers to some of the problems facing Indian communities today, by having them look at all the different things that have been inflicted on Indians over the last two-to-three-hundred years. And then, by exposing them to some of the Terry Cross' literature on understanding and working with Indian people. He has written a book for White social workers that we are pulling some of this information from. Some basic educational information on American Indians, the role of elders, spiritual leaders, etcetera.

As much as possible, this curriculum is going to be interactive. I guess my hidden agenda, if there is one, is that we want the representatives of both groups to be sitting down and working together. If we bring you into a room and talk to you for eight or sixteen hours, it is going to be boring for everybody and it is not going to accomplish what we want to accomplish. So, we are going to try to integrate interactive components into these training sessions. It is easier in the case planning area.

One area in which some concern was raised is when one group does not know what the responsibilities of the other group is. I imagine a two-to-three-hour session, delivered by people in each state that know the local system, addressing issues such as, what the realities are of Indian child welfare in the state, what the policies and procedures covering Indian child welfare for the state workers are, how do workers contact each other, and exchanging telephone numbers,real basic stuff.

The final curriculum module will address case planning. We are basically hanging this on another curriculum I found, a module that dealt with goal-oriented service planning. It is a straight forward method of case planning for child welfare, and it involves a lot of interactive work. I see that as being an important component, as well as the last component, because it works on relationship building and getting people to do active case planning together.

I see that we are out of time. I am glad that you all were able to come today. I hope the information we have provided, will be helpful to you in your various programs, and in planning training sessions in your own areas. Thank you.

WORKSHOP 4

Domestic Violence in the American Indian Community

(Wednesday, January 15, 1992)

Facilitator: Angelina Smilowitz, *Director*, Mental Health, Gary Center

Angelina: Indian women going to a traditional shelter for battered women that have been unable to stay there because it is a non-Indian shelter.

Woman: What do you mean traditional shelter?

Angelina: A non-Indian shelter. A shelter for battered women. We have about forty in L.A. and Riverside counties. Let us say that you are a battered woman from Lakewood, then we would probably would send you to a shelter in Pasadena or somewhere else. We would never send you to a shelter in your own area. But as an American Indian, you are sent to a non-Indian shelter and because they do not understand your customs, they do not understand your culture, therefore they do not understand where you are coming from.

At one point, we had a shelter that was an American Indian shelter. I was the director of the shelter at that time. What I did with our shelter was change this beautiful, old mansion into a safe place for our clients. There were seven bedrooms which were named after different tribes, we decorated them geographically. When the women would come in, we would ask them, "What tribe are you from?" They would say that they felt comfortable coming in, knowing that my staff was American Indian. We also had a Black person and a Caucasian person on staff; we were pretty versatile. We did not have a Hispanic person on our staff at that time, but we had one or two people that needed someone that spoke their language; I speak three languages, and I was able to help them. Spanish was one of the languages I learned by going to school.

The women at the Eagle Lodge said that instead of going into a non-Indian shelter, they would stay to themselves, talk to their own families. What happens in an American Indian community when there is domestic violence in the home, there is also shame. They feel isolated. They feel as though they are the only ones that are experiencing this, when in reality they are not. But they are fearful because nobody will understand their needs.

I was asked the following questions this morning, "Are Indian men the same as Mexican men?" "If you marry this person, do you have to do whatever your husband says?" "If your husband hits you, are you supposed to take it?" "Is that traditional for Indian men?" I said, "Not that I know of. "

Unless some of you know of another tribe, that believes if you marry this man and because you are his wife, whatever he does to you is okay. I said, "No, that has not been my experience or a tradition in any tribes that I know of, certainly not in mine." The problem with some of these women in this program, is that they have lost their children, some have just gotten out of prison—men and women both—they are going through a real difficult period of time. Many of them are trying to get sober and are working towards getting their children back, finding a job, or finding a place to live.

In the weekly workshop that I lead, we talk about different types of communication. We talk about how to handle domestic violence in your own home, as well as how to seek help outside the home. Many of these men and women are fearful of going out and asking for treatment. Primarily because they feel that other people do not understand the problems that they are experiencing.

As a therapist, one of the important tools that I have, is an understanding of different cultures. As a therapist you need to have some knowledge of the people you work with. I do not know what professions are represented at this conference, or what kinds of professionals I will be dealing with today, perhaps you can tell me. I know Karen. Do you want to tell us where you are from and what you do.

Karen: My name is Karen and I am from Indian Child Family Services here in Los Angeles. I am a case worker for the agency.

Cheryl: My name is Cheryl Foss; I am from the Urban Indian Child Resource Center in Oakland and I am a foster care worker.

Terry: I am Terry Paine. I am from the Spokane Tribe of Indians which are located in Washington State, near Spokane. I am the child advocate for the tribe.

Andy: I am Andy Body. I am the Director of Social Services for the Paiute Indian Tribes.

Anne: I am Anne Merce; I am from Browning, Montana.

Doug: I am Doug White Cloud, from the Otoe Missouri tribe. I am the Director of the Social Services program for my tribe.

Wilma: My name is Wilma Speaks Thunder and I am an educator for the ICWA in Browning, Montana.

Angelina: That you are aware of how prevalent is domestic violence in your areas?

Woman: Very much.

Woman: A lot of it.

Angelina: Do you have resources for them?

Woman: We have to go approximately seventy miles. Right now we have just started. Our program has only been in progress for a few months. We started the domestic violence classes through the Native Project. In Spokane, they will start in February, but this is the first class offered in a long time. Most of the time we have to travel 75 miles or more to transport people or make sure that they arrive in Spokane or in Colville for those services.

Angelina: Anybody else?

Woman: We recently got funded for a domestic abuse shelter. I think it is going on its second year now. It is funded through the State of Montana, before that there was nothing. They also have a crisis hot line.

Man: There was funding for a shelter, too. We have a shelter fund.

Angelina: Do you have a program for men? For batterers?

Man: Not as thorough as I would like to, most of it is through the court.

Angelina: Do you staff this other shelter?

Man: My staff mostly works with the victims. The first thing I do is pull state and committee work from a few staffers. Several years ago, two deaths were attributed to domestic violence, so we applied and were successful in acquiring the domestic violence funding, but the tribe is saying—other things we have required, other grants, so our priority on domestic violence is a very low priority right now. It is very frustrating to me. I am the monitoring agent for the domestic violence cases. So utilizing money in a roundabout way as a preventive measure is important—my concern is that the funding agency might not go along with our concept. I keep telling this to my councilmen. Big fears.

Angelina: Sometimes you have to go in a round about way to get this funding.

Man: Right.

Angelina: You may have to find yourself going through the back door in order to get that money coming in through the front door, in order to get the needs of your programs met. It's not that you're being dishonest, but if you say *prevention*, that is probably the key to be getting your money. If you say I want a shelter for battered women, specifically for American Indian women, sometimes you have a real difficult time obtaining funding.

I'm sorry to say that here in L.A., Orange, and Riverside counties, there is no such thing as an American Indian Shelter. We had one and we lost our funding. We do not have a program for males who need a place where they can talk to other men and get the treatment needed to find out "Why am I this way?," "How can I change?," and "I do not want to hit my woman, but for some reason I hit her." Of course, it is easier to say it is her fault, because she is his target.

The women do not have a place to go to either. It is a real difficult situation and in Southern California, I think we definitely need a batterer's program for American Indian men. We also need a battered women's shelter that is specifically for American Indians. You can ask for funding, but you also have to include other ethnicities.

When you have a shelter such as an Asian shelter, for Asians only, they will not take anybody else in, however they get their funding. There is one shelter strictly for Hispanics. They will take other ethnicities, but their target money is for Hispanic women. We have a center which is also strictly for Blacks. Non-Blacks are not going to go to that shelter, so Indians are left out there with the rest of the invisible population.

I think the reason that happens in L.A., Orange, and Riverside counties, is that we are an invisible ethnicity. If you look at Indian people, if I do not know the difference; I will place you with the Hispanics. I will place you with the Italians, I will place you with whatever ethnic group I think you belong to. That may not be the case, because there are Indian people that have blonde hair and blue eyes. They are even more invisible than we are, so we cannot go by physical appearances anymore.

We have to be able to ask these questions and feel comfortable in finding out, not necessarily what your name is, but what tribe are you. Like Cecilia was saying this morning, we have our antennas out and we do seek out our own people. You can just see people and ask, "What tribe are you; how did you know?" Well, one Indian knows another kind of thing. So, it is, once again, being proud of who you are.

Cecilia was talking this morning a little bit about balance and harmony, and I think until you are in harmony with yourself and in balance with nature, you are not going to seek out your own people. You are just going to flounder around, and wonder who you are, and where you belong. I do not know anybody else's experiences in regard to identity. I think the idea of identity is a real crucial issue. If you say you are American Indian, and you are giving a presentation, you are asked some real strange questions. I was doing a presentation at the University of California, Irvine (UCI), and those of you that know Orange County, know that it is real White. Orange County is a real strange county. If you are not White, you do not belong there, and that is where I live. One of the presentations that I gave at UCI was on child abuse and about Indian children.

One of the questions that was asked of me, and there were students, professors, and professional people in the audience. A young man raised his hand and he asked me, "How many white scalps do I have?" This presentation given was last year. I looked at him and I said, "Well, I do not have any scalps, but yours might be my first." I thought that was a real strange question to ask me. The person sitting next to him kind of hit him, but he really was sincere. He was not being a smart aleck. He was just completely uninformed about Indian people.

The audience wanted to know very basic things like "where do Indians live?" "I thought that they only existed in the movies." "What do they eat?" "What do they wear?" And I said, "We live in condos and houses, I eat anything that does not move." But actually, if you really look around, you are surrounded by Indian people. But because you have pigeonholed everybody, you do not want to know that we are here. So they have made us invisible.

I heard Cecilia say this morning that once we get diarrhea of the mouth, we do not stop talking, and it is true. I remember as a little person, I would not talk to anybody. We were not allowed to. We were not supposed to do any of this, express what you feel, at least not out in the world. I think once I began opening my mouth, it was hard for me to just be quiet. Because I am not passive, nor am I overly aggressive, don't think that I am going to let people walk all over me. Once we, as Indian people, start talking, we are going to be heard one way or the other.

What I usually say in the beginning of my presentations is that at the end of my presentation, you are either going to be mad, you are going to be sad, or you are going to be happy, then you have heard me. I have pushed some button in you.

Maybe I have said something you did not like. Maybe I said something that you connected with. Somehow you are going to hear what I have to say. Yet, I am not responsible for how you hear me, because if I talk to one- hundred people; they are all going to hear me differently, and they are going to interpret what I say differently.

Remember earlier when I told you that I lead the domestic violence group at the Eagle Lodge? I do a communication technique with them. We are a small group, I think we can do that. Let us see, two, four, six, yes, we can do it. We will do this in a few minutes, and you can experience what it is like to have five minutes that you can talk and s/he will listen. At the end of the five minutes, I want the to feedback what s/he thought they heard you say. Five minutes seems like an eternity. You think, my God, what can I say for five minutes. Now in that five minutes, I want the listener to look at body language, eye contact, choice of words, and tone of voice. Now I know traditionally, we do not make eye contact. You can pretend that you are not Indian today, if you want to. But if you are uncomfortable with eye contact, do not do that.

Now when you do this exercise, I want you to not feel responsible for what you are saying, because you are not going to be responsible for what Karen says to you. I just want you to learn how you listen. It is amazing when someone tells you that have five minutes to talk uninterrupted. That is really unheard of, this just does not happen—unless you are doing a workshop and all of you are very attentive and you don't want to interrupt.

So why don't you pair-off in twos or threes. If the three of you can do it together, then the entire exercise should take about twenty-minutes. You will each talk for five minutes, get feedback, and then talk for five more minutes. This exercise will also give my voice a chance also, to rest. Pair off with somebody.

Remember, each of you are going to talk for five minutes. You can talk about whatever you want. The reason I am doing this, is to give you the experience of how you listen. Also, the exercise allows you to see how you communicate. You are going to look for body language, tone of voice, choice of words, and eye contact. I will time you. Go.

Angelina: Alright, those of you that were talking, it is time for your feedback. Okay, switch. If you are through with feedback, then the listener talks now. That is the purpose of this exercise. Okay, listeners it is time for you to give feedback on what you thought you heard.

Let us go to this group over here. The purpose of this exercise was to get you to take a look at how you listen and how you give feedback. Those of you that are married, or have a mate, or have children, this is for you to get in touch with how you listen to your mate, how you listen to your children and how they listen to you.

Also, how did it feel to have five minutes of uninterrupted time? Did you feel like it was too long, did you ran out of things to say? And, how did you feel as a listener?

Now, battered women are never listened to. Men that batter women do not listen to anybody. So the purpose of this exercise is to get in touch with you. It is real important, because like I said before, in the domestic violence groups that I lead, and I do two a week, people do not realize how little we listen to one another. Whether it is your girlfriend, your boyfriend, your husband, your wife, your kids, grandma or grandpa, we have a tendency to turn people off, especially if the voices get loud. You must remember that after five sentences, people do not listen to you. So anything you want your wife, your kids, or anybody to hear—say it in the first five sentences.

In the groups, I also teach how to reframe communication. I want you to hear what I have to say, so I have to reframe what I am going to say. I have to think here, and I know if I say it this other way I am going to get a negative response. You are going to get defensive. You are going to tell me to go you know where.

If I tell you in a different way, the same way using different words, maybe even changing my tone of voice, you will get your needs met. And you are going to hear me. So it is real important for you to take a look at how we communicate to and with other people.

Actually, I am glad we had a small group today because you cannot do this with a real large group, because it takes too much time. But with a small group, it is nice, because you can begin to take a look at, not just what I have to say, but what are you doing out there. It allows you to remember how you function out there in the world or in your own home. Because you often have the tendency to function the same way, if you are in a residential setting, or if you are in a shelter for battered women, or in a program like the Eagle Lodge. So there are a lot of things for you to look at. How did you feel having five minutes of uninterrupted time?

Woman: It felt like I got everything out that I wanted to say. There was enough time.

Angelina: As the listener, how did you feel listening to her?

Man: Well, I empathize with everything she said. I tried to give her positive feedback.

Angelina: From what she said or from what you felt?

Man: Well, from what she said and what I felt.

Angelina: How did you feel having five minutes of uninterrupted time?

Man: I felt that it was ample time to try to communicate what my feelings were on my beliefs, my ideas, and my philosophies.

Angelina: What did you notice in body language?

Man: That she was an attentive listener; that she was listening and concerned.

Angelina: Good, anybody else? Over here, how did you feel?

Woman: I got nervous, I ran out of things to say. Then afterwards, I thought of everything that I could have said.

Angelina: Did you like having uninterrupted time?

Woman: Yes.

Angelina: What about the feedback? Was it pretty accurate?

Woman: Yes, it was.

Angelina: What did you think?.

Woman: That what I said, was not what I heard.

Angelina: Tell me whatever you want me to know.

Woman: I found five minutes of listening difficult, because in my job we talk back and forth a lot, and for me to sit there and listen without asking any questions was very hard.

Angelina: Was it?

Woman: And to talk, as well. It was good to talk for five minutes without interruption.

Angelina: And you had two people listening to you, which is unusual, because we usually do not have that opportunity.

Woman: Well, in my line of work, they do listen a lot.

Angelina: You are lucky. How about you?

Man: I was petrified and my heart stopped. I am okay now.

Woman: But he did really well.

Angelina: You want all of these women to run to your rescue? How did you feel having that time?

Man: I thought it was fun. I had a good time with it. And I also had a good time listening.

Angelina: Was the feedback pretty accurate?

Man: It was fairly accurate. Like I said, I had fun telling them what I was doing, really trying to share all kinds of information, kind of like a little game there.

Angelina: Were you playing a little game to see if they were listening?

Man: Right, I was just throwing different stuff at her from all angles.

Angelina: Do you do that outside?

Man: If I get a chance.

Angelina: Usually we do in here, what we do out there. If we have a tendency to play games, we do it in here, as well as out there. And, you need to take a look at the consequences. I was asking you about the feedback, you shook your head no. It was not accurate?

Woman: Oh, it was difficult for me to listen to him because when he was talking, he would jump here and there, he had a real tendency to vacillate, which made it difficult for me to try and keep up with what he was saying.

Angelina: So that is why you felt confused? Did you feel that you confused him also?

Woman: Not really confused, just when he talked about where he is from in the area, because I am not familiar with it. I understood all about his family and where his father came from, as well as about his mother. He also talked about how long he and his wife have been married, and his hobbies are.

Angelina: So the second time around, were you still playing games?

Man: No, it was only one time.

Angelina: Only that one time.

Man: I caught on to his games.

Angelina: Good! Most people are playing games, if you really listen attentively, you can see the games immediately. We have some me and women that are very good at that, too. I mean they just come in and tell you all kinds of stuff and you are supposed to just respond, "Oh, really?" They lean on like you were just born yesterday.

Man: But see, I did not tell her any lies. Everything I told her was the truth, but each thing that I told her was coming from a separate experience. In other words, I would tell her about my home life and then I would tell her about jackrabbits, different kinds of things.

Woman: He would tell us about his dad, and then he talked about where he went fishing, just different things. But I was interested to see the outcome of what would happen here.

Angelina: So they were better rabbits than you, they listened?

Man: Oh, yeah.

Angelina: How about you? How did you like having uninterrupted five minutes?

Woman: I had a hard time concentrating, I guess I felt under pressure in some way. I felt I had to come up with all this stuff to talk about in five minutes. So it was not like I was going, "Oh, boy! I have five minutes to talk uninterrupted."

Angelina: How did you feel as a listener?

Woman: I like the listener role much better. I would rather listen than talk and I felt myself wanting to help—she was running out of things to say, but there were questions I could have asked and I wanted to, but I could not. So I had to just sit there. I found myself wanting to like help her, or interject, or something.

Angelina: We are always ready. We always want to help. We want to be that caretaker. Let me help you here. Do not feel that way, feel this way. And it is real important to not do that. How about you? How did you feel having five minutes, and I know you said, "Oh, my God!"

Woman: I think I talked for five minutes and all of a sudden—it was really hard filling in the time, usually I can talk about that for an hour.

Angelina: Did you like the listener role better?

Woman: Yeah.

Angelina: Was she pretty accurate with your feedback?

Woman: Yes, there was one section that completely escaped her memory, however I did talk about all kinds of different things.

Angelina: Sitting in this position, you notice when people leave. Like they are gone for a few minutes? You are here, but you are not here? It is like, whew! She's gone. She is not listening. She is going to miss what I have to say. I noticed when she did that. As a listener, it was like she just left.

Woman: I got that from her. A couple of times, she really was not listening, or when she gave me the feedback, it was unclear, like she was sometimes off and sometimes somewhere else.

Angelina: Remember, some times people are given the idea that we are not important enough to be listened to. Whatever we have to say is not that important. If you feel that way, then you are not apt to want to talk or feel that somebody is going to listen to anything you have to say. So it is real important that all of this comes up for you depending on how you feel about you. If you feel good about you, then anything you have to say is pretty important and valid.

If you are interested, it is because you feel that way, not because the listener is not listening. It is because you are feeling like I am not important enough, I do not have anything to say. What did you learn from this?

Woman: I talked a lot, but at the time, it seemed like five minutes was a lot of time to try and fill in. But it is something that I would like to go home and try with my husband. I really would. I would like to have five minutes of uninterrupted time to talk to him. He is the one, he is like me when we are talking. When he is talking to me, I want to interject positive things and tell him, "Hey, that is great." Instead of trying to remember the whole five minutes and trying to relate back when you are done. I would love to have five minutes with my husband, just so he could just sit there and listen to everything I have to say.

Just before I was heading down here this morning, I wished I had that five minutes with my husband, because we left each other saying some things that we both may have misunderstood. But, I'd like to have five minutes without him saying anything. My communication with other people—in relation to my job—if they too would just listen. I now think, I will also just try to listen to what they are saying. It was good, I liked it.

Angelina: Good. How about you?

Man: I am a much better listener than I am a talker. I am glad she wanted to talk first. I am glad she was quick to jump on the topic that she wanted to talk about. She went on about her job, but outside she was uncomfortable. Her body language reinforced everything. It was interesting, her body language coincided with everything that she was feeling and what she was saying.

It was hard not to interrupt, because you share a common philosophy, and you are subject to the same pressures, you want to interject, as well as to be a good listener. I agree, you have to just let them talk— and I agree, if you interject too soon, or even though you are complimentary or sympathetic, you have interrupted their thoughts, they then do not really have a full opportunity to purge what they feel. So reflective body language is your way of being a good sounding board.

That is not a good time, when you start doing your reflected listening, it should be at a time after your five minutes. However, you should give that person at least five minutes to say what they want to say. For instance, you say validate that with your own body language, but you might not verbalize it. Again, it hurts much more comfortable being a listener. I guess that is why I ended up in social work business.

Woman: You could tell that he understood what you were talking about, yet he did not have to say anything. And that felt real good to me. It made me feel more comfortable when I felt that I was running out of things to talk about.

Angelina: And it is real important to take a look at—you said, "I would like to do this with my husband." The one thing that I will caution you with your husband, or with your mates, is that when you have that five minute interaction, where I am going to talk and you are going listen, and you are talking to your husband, he may be listening defensively, or judgementally. He is going to sit there saying, "Alright, I have got to remember that, because when it is my turn to talk, I am going really let her have it. You know, because she is wrong and she did-dah-dah-dah."

The same thing with the women, if you are listening to your husband and you are going, "You know blah, blah, blah, thinking all kinds of things, thinking I'm going to get back at him, because I did not like what he said, and I have to remember that." Then you are not listening attentively. Then you are defensive, and what then happens in a domestic violence situation is that people listen defensively, and they end up arguing, or fighting, or hitting one another. So it is real important that you do not listen judgementally or defensively, because both parties have the right to speak his or her mind without saying, "You are wrong, you are stupid, that is not what I said."

In this mode of listening, when I ask you to listen to me and you start giving me advice, you have not done what I asked. That is part of this communication that we talk about. When I ask you to listen to me, and you begin to tell why I should not feel that way, you are trampling on my feelings. I know you have done it, because we all do it. It is human nature. Oh, do not feel that way. You should not feel that way. I did not mean it. I did not mean it like that. You have already said it.

So that is part of learning to reframe what you are going to say to your person, to your mate, to your friend, whomever you are talking to, somebody that really matters to you.

Another thing that we have a tendency to do in a violent situation, is that we have no boundaries. In an alcoholic family or a violent family like I come from, there are no boundaries. You never know whose stuff you are going to be stepping into. Because nobody has taken the time to set boundaries. So, in a therapeutic setting, my job as a therapist, is to try and understand whatever culture I am working with.

And right now, this part of the presentation is on American Indians. Before I could become a therapist, I was required to attend therapy. When I went to therapy, my therapist called me

"Andrea," I would repeatedly say to her, "My name is Angelina. Hi, my name is Angelina." Every time I went, she would greet me with, "Well, Andrea, how are you doing today?" I thought to myself, "This is crazy, she is the therapist, but she does not know how to listen."

At the end of the required sessions that I had to attend—everyone in the program was required to attend therapy—at the time, I had an issue with domestic violence. I did not want to deal with perpetrators, with abusers, or battered women. I did not want any part of them because that was where I came from. I wanted to get away from it. So at the end of the therapy, the therapist asks, "Do you have any comments?" And I said, "Yes, I do. First of all, I think you need to go get more training on how to listen. My name is not Andrea, my name is Angelina. Angelina did not learn a thing from you, and Andrea, I do not know who the hell you were talking to, because it certainly was not me."

And so, for me I learned a valuable lesson, but I also felt invalidated. Try paying for these sessions when these people are not really listening and they are invalidating you as a person.

Man: Were you not given some type of an objective with steps or procedures, which to arrive at that objective?

Angelina: When you are going to therapy? The purpose of therapy is for you to resolve any unresolved issues you may have had in your past. Mine was to resolve the anger I had towards the family that I grew up with.

Man: So the first step would be identifying the anger, right?

Angelina: Angelina was telling her, but she was listening to Andrea.

Man: The main point would not be the name or even who the identity of the person was?

Angelina: But the identity of the person is real important. The name is real important.

Man: Is the situation not important?

Angelina: No. If you come into my office and you tell me, "Your name is Sam," and the next time you come in and I say, "Hi, Bill. Hi, Bill. Hi, Bill," and your name is Sam, how important are you going to feel? How hurt are you going to feel?

Man: But if I go there not to be reinforced or to be validated—not for that purpose, but for the purpose of finding the solution so that I can deal with my problems.

Angelina: Oh, I did do that. I dealt with the problem that I went in there for, even though I was called by a different name. I decided that was not my problem, that was hers. I did not take it on.

Man: So then you did learn from that?

Angelina: Yes, of course. I learned how I, as a therapist, have to learn how to listen more attentively. I have a case load of probably one hundred people a month. I know all of their names, it is real important. The name is important, and the problem is important. So when I say that I understand the culture, then I must also say, that I have to establish a relationship with my clients. Right?

Well, to establish a relationship with American Indian people takes a little bit longer, than with non-Indian people. First of all, I work for the Indian Center as a contracted therapist. I work closely with Karen on different cases, and my job is to go into the home where the kids are in foster placement or in a family that needs help.

My job with the Indian Center is to go to the areas where my clients live, my job is to go into their environment. They could care less what kind of degree that I have. The most important thing that they want to know is, "Do you understand my situation?" "Do you care about me?" "Are you going to make me lose my kids?" My job is not to get them to lose their kids, my job is to establish a relationship with my clients.

Some of areas I visit, as Karen well knows, are not in the best areas in L.A. I have one client, I think I have been seeing her for about a year, I was finally invited into her home for the very first time. So when we are talking about establishing a relationship with a non-Indian person, you can establish a relationship probably within the first two sessions. With an Indian family, it takes a long time. Why does it take a long time? Because of trust.

I was going to say they do not trust, but we do not trust as much as we would like to, but the American Indian families do not trust. Of course with good reason and because I understand that, we make that connection. I make that connection with my Indian clients much quicker than with a non-Indian person.

I think we only have one other therapist who works with Indian families. He is non-Indian and I do not know how he connects with his clients. It is real important to me, when I go to and talk with them, and they let me know what I need to know about them.

I approach my clients like this, "What do I need to know about you, so that I may be more effective in helping you?" I am not going in there with the attitude, "I'm up here and you are down here." I do not go in there with that type of attitude; I do not feel that just because they are my clients, I am better than they are. I do not feel that. I feel that we are equal.

The therapist-client relationship, to me, is important. Without a relationship, you do not have anything. Like I said before, it took me probably a year to establish that trust to go and talk with her. And when she finally invited me into her home, at first she was embarrassed because of how she lived. I said, "Heaven knows the type of places I have lived in." And, nothing embarrasses me, but she was embarrassed.

I have another client. I go to her home, but do you know where we have our sessions when it is hot? Outside. When it is raining, we meet in my car. Why? Because she is too embarrassed. Question to Sophie, have you ever been in her house?

Sophie: No.

Angelina: I have never been asked in, and it is not because she does not like me, and it is not because she does not trust me. I think it is because she feels embarrassed that she has nine kids and she lives in two rooms. So when we talk about what the needs are, the needs are basic. They do not need you to go there feeling that you are better. Then we do not have a bridge, do we? Then we have a wall.

If I were to go there, and pretend that I am better than she is, we have a wall. We do not have a bridge. And what I work towards is building that bridge. How do I do this? Working with the kids, once the kids begin to understand and trust you, then the kids become another tool that I use.

I work with adults in basically the same way. I treat them with a lot of respect and care, and I let them know that I do not have all the answers. I ask them what their needs are, and they usually will say, "I do not like this, this, this, and this, eat." They are a little bit easier to talk with. When they feel they can trust you, they actually pull mom and the rest of the family in.

If you go to see a child, and you establish a relationship with him or her, they are the ones that pull in the rest of the family. It is really cute, when I go to her place, where she has nine kids, I tell them that I will be there between 3:30 and 4:00 P.M. I am just using this anecdote as an example. I do not even get out of my car, because there are eyes all over that place. And, pretty soon in the background I hear, "She is here, Angelina is here." Then you see little legs coming from that direction, or from that direction, and then they go get their mom. It is really neat.

In any family, whether it is non-Indian or Indian, people fight changes. Why are we afraid of change? It is unknown. In this violent family, we know how to function in here. Living in this dysfunctional family, I know what my job is, I do not know what it is to live over there where people are not fighting. As a little kid, my job was to protect the younger ones. So, what did I do when I was around these people who were drunk and hurting each other? I would wake up the little ones and I would go hide them under a table, so that they would not get hurt in the process.

When you come from a large and a violent family, you have a certain role. My job—when my father was drunk, passed out, and tied-down—was to pick up a knife while he was passed out, and cut the pockets out of his pants because there was money in there. My family needed money and he had it. When he got paid, he went and used it for alcohol. My job was to recover whatever was left.

I became very skilled with a knife, I would go around and cut his pockets out, and give the money to whoever was there. The next morning, he would go to put his hands in his pockets and there were no pockets. Then, all hell would break loose. Because that was my role, no one would tell who did it.

As I said, I do not know for a non-Indian person how long it would take to establish a good rapport with an Indian family, because any time that you go in their home, you are going to make changes in that family. They are going to be defensive about the change, simply because they do not understand what you are really there for. They do not care what degrees you have, they are not interested in that, they are interested in what you are really going do?

Karen: My role is pretty much the same. My clients really want to know why I am there or what my function is. They are afraid, that somehow, we are there to take their children away, and write reports that are bad.

Angelina: When I get questions like that, I usually tell my clients if I am going to write a report. I'm not going to say you are doing great to your face, and then write a report that says this family is completely dysfunctional, take those kids away. I will not do that.

I will always give my clients a copy of what is being said about them, because I think they have the right to know. That is another form of learning how to get people to trust you, especially in a therapeutic setting. Some of the defensive techniques are, "I do not care." "You do not care about me." "Nobody cares." "Why should I change?" "What is in it for me?" "Do you look better, if I change?," and, "How much are you getting paid, if I change?"

It is really not the money. In the situation I was talking about earlier, it is being able to connect with people. Being able to get that trust. My kid said to me one day, "Mom, you should not be in those areas." And I said, "Well, I guess in a way it pays to be stupid, because I am not afraid of anything." This neighborhood was a real rough area and talking to Kathy about, she said, "I do not think it is a good idea for you to go there anymore." I said, "Well, give her bus passes and I will meet her at the Indian Center." She said, "Okay."

I got into a situation where I parked my car and got out and I went to this address and it was real dark, late evening. I found myself surrounded by three Black kids, they were probably 17-, 18-, 19-year-olds, and they were just mouthing off, yelling "Hey, baby, are you lost?" Or "Where do you live?" "You want to have a beer and all that kind of stuff." I have a big mouth. Talk about refraining, I did not even do that.

I said, "Shut up! The one guys says, "Well, do you live around here?" I said, "No, I do not live around here." He said, "Are you lost?" And I said, "Do I look lost?" And he responds, "Well, when you get through with your clients—they already knew—come on down and we will have a beer." I said, "Get out of here."

So, I went to see my client and we were talking in her little place. I sat down in the chair and I felt something crawling on me and I went, "Oh, my." She said, "Oh, I forgot to tell you, they just fumigated for cockroaches." I hate cockroaches. I cannot stand them. And I said, "Well, they missed a few, because they were on me." I am thinking, "Oh, my God." When I got through with my session, she says, "By the way where did you park your car?" I said, "You know, I was just thinking about that. Do you think my car will be okay?" She says, "Well, it depends on what side of the street you parked it on." I told her that, "I parked it on that side of the street" She says, "If you get to your car before five, you will have a car left." I ran to my car in two seconds after she said that.

I was telling my son about that neighborhood—he goes in that area, but he is big like you—and he says, "Well, you should not be going in those areas, Mom, it is not a safe area." And I said, "Yeah, I know. Well, you go in that area." He says, "Yeah, but look at my size and look at yours. Nobody is going to mess with me." And I said, "Well, they probably think she is so stupid to be here, we might as well leave her alone."

Once again I was trying to develop that relationship. She was in an abusive relationship. And so, when we talk about developing a therapeutic alliance with her, I am not going to develop an alliance, if I am brushing off all these little critters that are crawling all over me. Or by telling her that she lives in a cruddy place and that I'm not ever going to come back. What would that do to her? What do you imagine would happen to her?

Woman: She would never want to see you again.

Angelina: No.

Woman: She would be embarrassed; she would be hurt.

Angelina: What else would happen to her?

Woman: Her self-esteem would sink even lower and she would still be letting the abuse continue to happen to her.

Angelina: Because the abuse is continuing. The thing that we both have to remember as service providers, is that we cannot make them change unless they want to change. You can talk, you can give, and you can help, but until they are ready to make that change, you are not going to make a real big difference.

We were also talking about the theories that we learn in school for therapy. I hate to tell you, they do not work on Indian families. You cannot take a family systems theory or Freud's theory and say, "This is going to work on this client, this theory is going to work on this family." Because it doesn't. It depends on you, the service provider, as to where you are coming from and how much you really understand, and also how much you really respect their differences.

If you are non-Indian and you are working with Indian people, you need to understand the culture. You need to establish a relationship. You need to maintain that therapeutic alliance. First and foremost, you need to respect the difference between the cultures. If you do not know anything about the person you are working with, I suggest that you do some research, so that you do not feel completely out-of-place working with the families, because it is real important.

If you cannot do that, you do not want to take the time, or you work for an agency that is giving you clients that maybe you are unable to work with, that you do not understand, or that you do not like—then you need to get help with that too.

I know that today, we have people that do not want to work with Asians, they do not want to work with Mexicans, they do not want to work with Blacks, and of course, we Indians are last on the list. You here it all the time, "We do not want to work with them." This happens. If you are given a case load, and you're given clients of different ethnicities and you do not understand that ethnic group, I would recommend that you get some information. Any questions?

Man: Yes, I have a question. I play many roles, the advocate, the protector, the prosecutor, the counselor and I just do not have time for that. Now, the tribe is trying to get counselors to go out and relate to the dysfunctional families. It is working to a degree, but all I am doing is putting out the fires.

Angelina: It sounds like what you are doing is, like what Cecilia said this morning, "Band-Aiding some of the problems." You are trying to do everything and it is impossible.

Man: Well, I guess I am sort of wrapped-up trying to do everything. We are responsible for Headstart, Family Violence, Day Care. All of this going through my head is real mind-bogging, so I really need some help.

Angelina: Are you opposed to designating people to help you?

Man: Oh, no. That is the council's decision.

Angelina: Will they give you the help that you need?

Man: Hopefully.

Angelina: How long do you have to wait for that help?

Man: Well, we have to wait until the funding comes in.

Angelina: In the meantime, all you can do is kind of Band-Aid things?

Man: Right.

Angelina: What does that do to you as a person, as a service provider?

Man: Well, in one way if I have a positive result, I feel good about it. On the other hand, if I cannot handle it, I get very frustrated.

Angelina: How do you take care of yourself?

Man: In what terms?

Angelina: Emotionally. How do you take care of yourself emotionally and mentally? Because those of us that are out in the field, we are working with some real tough cases, we need to be able to take care of ourselves, in order to be able to take care of the them. Remember you cannot give your families, what you do not have. If you do not take care of you, you cannot take care of them. And I am talking, emotionally, physically, and mentally.

Man: It goes back to number one?

Angelina: Yes, sir. Yes, it does. If you do not take care of you, you cannot take care of anybody else. It is like the little child in a home, if his needs are not being met at home, he is going to go somewhere else and get them met. It will either be through grandparents, aunts, uncles, teachers, friends, somebody. Within your own family, if your needs are not being met as a little person, you are going to go out and get them met. And it is no different as a big person today. If you are not taking care of number one, you are not going to take care of anybody. It is real important.

Remember what I said earlier, if you want these people to hear you, make sure that in your first five major sentences, that you are going to key in the words that you want to be heard. You want your needs to be met. And, how do you do that? It is how you communicate. It is how you go about asking for what you want. I can get anything I want, any place, any time, but it depends on how I go about it. You can develop those skills as well.

The families that come from a situation of domestic violent, they do not know—remember I said earlier, that there are no boundaries in these families. All they know is violence and fear. How do they control? Who controls us in this family, if it is not the person, the bigger person, or the little person that holds the biggest stick? How does a man that abuses his wife, how does he control that family? Anybody work with domestic violence cases? Okay, how do they control?

Man: Intimidation.

Angelina: What form of intimidation?

Man: Verbal, physical, and subliminal.

Angelina: How about you?

Man: Like you said, they do not hear you. They do not hear me. They do not hear their wife. First of all, they do not come forward.

Man: Why?

Man: They resent me meddling. That is why we have to wait until the judge orders them to be counseled. Then we go in and start talking about the violence and the abuse. When you start getting in their face and say, "Hey, this here is your wife with a broken jaw. What did she do that her jaw came against your fist?" They do not even see that. As a matter of fact, they even desensitize themselves to the pain in. That is the start. Unfortunately, that often is the first part of the healing process with the perpetrators. Say, "Hey, you made some mistakes and it will not go on." Possibly a natural consequence for it. Then you start talking about the issues anyway you like, you get them talking, and that is the only way to start. I have tried other ways.

It was probably wrong of me to try to sidestep the Court and sidestep the system to preserve the family, but it does not work very often. Plus remember at that moment, when there is actual physical assault—I cannot think of one case where that has ever worked. There has always had to be a natural consequence for it to start and process it, how it is reversed and what is going on.

Angelina: Remember you and I represent change for this family. I mean they already know how to function in this chaotic situation. We are going in there trying to take that away from them and what are we replacing it with? That is something else we have to take a look at. When you walk into a violent situation or a dysfunctional situation, take a look at the dysfunction. Do not just take away the dysfunction and leave a void there. You have to replace it with something else, you have to give them some tools to work with. This is where you, as service providers, have to take a look at, what you have to offer this client. If I am going to take that dysfunction from her, what can I give her in its place, so she can function in a different way?

I use this analogy in my domestic violence group, because it is a coed group. Let us say you start to cry. Sometimes people are concerned or fearful, they do not know what to do with tears? What do they do? They go and they do this; hand over a tissue. Somebody said it earlier about the process, you stop the process.

The rules in my groups are, should a person start to cry, I do not want anybody to hand him or her a tissue. I do not want to touch him or her. I do not want you to say, "It is okay." I want you to let that person do what s/he needs to do, so that you do not stop the process. Because s/he is going to have to start all over again, if you are this caretaker saying, "Oh, it will be okay." We can say that in a different way at a later time.

So it is real important for you, as service providers that are working with dysfunctional families, violent families, and abusive families to take a look at, what am I taking and what am I replacing it with? So it is real important for you to know your own skills and to also know your limitations. I cannot go in there and do an alcoholic prevention treatment, that is not my expertise. I cannot tell them what to do and what not to do. Just because I come from an alcoholic and violent family does not make me an expert in those areas. Or telling them, "Well, do not let him drink today, let him drink tomorrow."

The same thing happens in a battered woman's shelter. We get women and children that come to a shelter. Some are very, very physically abused—mentally, emotionally, and sexually. After about a week, those that are physically abused begin healing. Even though they get therapy at our shelter on a daily basis, the first thing they do is pick-up the phone and call the batterer. At our shelter, one of the rules is that you do not call your abuser. What she does say, "Well, he did not mean to do it. He was drunk. I am not going to press charges." The kids are missing dad, and so she end's up going back.

As I pointed out earlier, another thing that happens in this dysfunctional family is that they know how to function in abusive relationships. They create a chaotic situation in the shelter with another resident—they do not know how to function where somebody is not yelling at them, or somebody is not hitting them, or calling them names, or sexually abusing them—that is a change.

So, what we try to do is teach them new skills in the shelter—a different way of communicating. Different ways to get her needs met. I talk about the "Golden Penis Syndrome." What that means is that battered women get beaten, and then their husbands say, "I am sorry. I love you. I did not mean it.

Sweetie, Baby, Honey." Whatever the names are, and then they end up having sex. They make-up. It is not actually the sex, it is the closeness that she is looking for. I call that the "Golden Penis Syndrome." He thinks he can fix anything with that penis of his, and it is not that at all. It is that closeness that she is wanting. But she does not know how to obtain the closeness without being beaten, making-up and then having sex.

So what we try and teach them is the difference. That you can get the closeness and the intimacy without being hit. You do not need to be hit to get that closeness. So it is real important for you, as service providers, to take a look at, what can I give the client in place of this? If I am coming in here with a Band-Aid, if you will, let us hope that Band-Aid has got some antibiotics in it, so that you can help this person. Give these people the tools that they need because it is important.

Man: In this gentleman's case, I think, that in giving Band-Aids, he is doing as much as he can.

Angelina: Yes, I am not saying that what he is doing is unimportant. I am just saying that he needs more than what he can do right now, but what he is doing is the best that you can do. I said it earlier, you cannot give, what you do not have. If you are not taking care of yourself—emotionally and mentally—you cannot be effective with your clients. If your own house, if you will, is not taken care of—and when I say your own house, I am talking your own body. If you are not taken care of there, you are not able to take care of anyone out there in the world. Any questions? Any feedback? I would like some feedback or questions.

Woman: Well, the question I have was addressed earlier when you mentioned that perhaps there was some dynamic in the Hispanic culture that may bring about domestic violence. In your experience, is there anything that you know of in American culture that makes women tolerate domestic violence.

Angelina: I think what causes the majority of violence in an Indian family is alcohol. Alcohol or drugs is the biggest factor. This morning, a man was asking, "If it is traditionally acceptable for American Indian men to beat their women? and if Indian women are told, 'You are marrying this man, and if he beats you, or does whatever he wants, you are his woman, you are his wife, you have to put up with whatever he does, you have no say.'" Traditionally, the Mexican people, male and females, are taught that. That information does not come directly from me, but from women at the agency, where I work, who are Mexican women.

Woman: On our reservation, I cannot think of one domestic violence case, in the last five years, that was not caused by alcohol or drugs. I do not think that there are any that have happened, and that these couples get along just fine all week long, until Thursday or Friday comes along.

Woman: Payday.

Woman: Yeah, the weekend. Thursday, Friday, whatever pay day is. The payday weekends, especially around the first-of-the-month, in the middle-of-the-month, and at the month's end.

Man: The battered woman syndrome is a learned syndrome. Sometimes it is falsely labeled within cultures. I am very interested in battered women in my culture. What is painful, is that, most battered women are actually victims of abusive homes. And for some reason or other, they seem to gravitate towards and find a man, who is a batterer. That is one of the problems with the battered, and I believe that it has been falsely associated with various cultures. Isn't it a dynamic in all societies, that children of domestic violence, that have a father who is a batterer, usually end-up marrying one.

Angelina: Yes, they either continue to be victims, or they become perpetrators. Males and females, both.

Man: Right.

Woman: Yeah, the young boys see their dad doing it; they feel that is how they are suppose to do it, or the young girls turn around and say, "Well, my dad did that to my mom, so my husband can do that to me.

Angelina: Violence is not culture-specific, it does not discriminate between rich or poor, or anything else, it goes across the board.

Woman: We had a question brought up, one time in a class, about why you only hear about domestic violence in middle-class or low-income families. We have also debated that, and my main perception is that you do not hear about from people in the wealthy income brackets, because they have the money to hide it.

Man: They do not prosecute it.

Woman: But it's there.

Angelina: Absolutely. They can afford to go to a psychiatrist. They can afford to get an attorney. They cover it up very well.

Woman: We cannot do that in our area, we cannot afford to go to a big town and get it taken care of without anybody knowing about it. When you are court-ordered or you are told to go to the mental health clinic, it is right there where everybody can see you walking around, so everybody knows.

Angelina: That is why it is difficult, because on the reservation, or in a small town, if you have a shelter for battered women and the location is supposed to be secret, there is no such thing. Here in L.A., we can hide and we do very well, until the woman picks up the phone and calls her husband and gives him the address. Normally, on the reservation or in a little town, you cannot hide those things. Everybody knows.

Woman: Even if you take them to the bigger towns, it seems like you are right, they either call or somehow it is found out.

Angelina: And now, what has happened with the coalition is that the rules are basically the same at every shelter for battered women. Some shelters have a drop-off point, it could be the police department, or it could be a school somewhere. Whoever is bringing the battered women, does not know the address. And the batterers find out, only if you pick up the phone and call.

As a result, the women have become very skilled, they say, "That is my uncle, that is my grandfather, that is my brother." Eventually you find out that it was her husband. You cannot jeopardize the whole house because of one woman. So as quickly as you help her, then you have to tell her she has to leave.

And that is real hard to do, because you have taken her in and now you are telling her that she has to leave because she gave the location away. It is a real difficult situation when we talk about violence in the American Indian community. Maybe some of your neighbors are domestic violence victims, but most of them do not talk about it. They do not talk about the violence in their homes, because they bring shame to their families. Of course, the husbands do not want the rest of the community to know that they are abusers.

When I counsel American Indian clients, I prefer to go to their house so that I can let them be in their own environment. I learn so much more. And, they open up much easier, because I am in their territory. I have to respect their territory. When they come to my office, it is different. So for me to go into their environment is more enlightening, and they are willing to be more open. They are more apt to share things, that they would not share in my office.

Woman: Is it more the individual work, or do you ever do family therapy?

Angelina: I do both individual and family. I usually start with the mom. Most of my clients do not have husbands, or boyfriends, or whatever. So, I start with the moms, then I with the kids. Some children do not have either parent, so then I work specifically with the child.

Woman: How do you work with children? The employees, and stuff, do you transport all of it with you?

Angelina: Yes, my trunk has toys in it. Crayons, some melted crayons, and broken—you name it, I've got it. I have a purse that is this big. I carry my purse with all my toys here. Sometimes they come out to my car and pick what they want to play with. I do a lot of play therapy, and a lot of art therapy. Especially with little people that have been sexually abused. I talk about displaced anger with them, I use big words. The first word I use is perpetrator, what is that? Then I go into what a perpetrator is, and then behind the word perpetrator, we go directly into their feelings.

How do you feel about what happened to you? Then we go into dealing with anger, and hate, and guilt, and victim—all of that. There are many, many words that we use. The kids seem to like displaced anger, especially when they draw a picture of kicking the wrong person. They are mad at dad for sexually molesting them. However, in the picture, they are kicking their sister. And that is what we call displaced anger.

Then we take a look at who hurt you, not that I want you go kick your dad. But understand that this is where you anger stems from. How can you express your anger in an appropriate way without kicking dad or is that it hurt you? I work with them that way, I do a lot of art.

Man: Are you involved in court room investigation techniques?

Angelina: No, I am not involved in the court room, but I am subpoenaed a lot to go testify. That still makes me nervous.

Woman: Why do you do most of your work in client's homes?

Angelina: The reason I go to their homes, that is part of my job as a therapist at the Indian Center. Most of these clients do not have transportation. The Indian Center will give them bus tickets and they go to therapy at the Indian Center. This one client, I was telling you about earlier who lived in that real rough neighborhood. She was given bus tickets so that we could meet at the center, yet she would not meet there. It was as if it was too much trouble. I went there twice when she did not show up. I then decided that she was one of these people, that no matter what I did, she was not going to make any changes. So I called her and I said, "When you are ready to become serious, then call the Indian Center." She did not do it. But most of my clients are not like her.

It is very important to remember, that you are in their environment and that you are in their element. When they come into your office, it is a sterile environment. They are looking at it, not trusting you, and thinking that they do not belong here!

Woman: When you visit in their homes, they see that you accept them.

Angelina: Another thing to remember is how you dress. This is how I dress all the time. I have been told that you should not go into their homes dressed like that because you stick out like a sore thumb. Well, I am not going to dress like a bag lady.

Woman: I really appreciate the way your expressions cover all dynamics. You are very specific.

Angelina: Well, thank you.

Woman: Can you take time to discuss the steps on how to cope with problems in communicating with clients?

Angelina: I did that earlier. Before you came, we did a communication-listening exercise technique. And I had everybody do it, so they could experience what it is like. And they said, they found it real valuable.

Woman: Very practical.

Angelina: It is practical stuff. I mean we can go in there with all kinds of theories or whatever. The theories do not work.

Woman: And you are right. I found that out.

Angelina: I find that out all the time.

OPENING CEREMONIES

(Thursday, January 16, 1992)

Loretta Howard: I'd like to introduce our keynote speaker for this morning's session. His name is Dan Edwards, and he'll be talking to us about substance abuse and its effects on the family. Dan is on the faculty at the University of Utah, and is working very closely as the Director of the American Indian Study Center. He also teaches at the Graduate School of Social Work there, and is also the Director of the Indian Social Worker Program. Prior to Dan's address, I would like to introduce Little Crow, a Dakota/Lakota elder who will deliver the invocation this morning.

Little Crow: Good morning. Well, they say I'm an elder. I guess I'm getting up there, I'm a Dakota/Lakota, and I'm one of the executive directors of the American Indian Unity Church. The church was begun for Indian people, so that we might incorporate our old traditions and worldviews. Many of our traditional perspectives are as substantive as other cultural worldviews, and that if we could return to those practice, we might be able to somehow mirror the positive aspects of the Demming method. Dr. Demming's method—which has been incorporated by the Japanese—could enable us to return to a system of cooperation and community, and the idea that everyone is important. It would also enable us to recognize that everyone is connected to the earth and each other, as well as see that everyone is sacred. Interestingly, Dr. Demming recently came up with that theory, when the Dakota/Lakota people held that philosophical viewpoint for thousands of years.

As Indigenous People, I would be hopeful that this year, which they are entitling the "Year of the Indigenous Person," that we might be able to go even further in the consciousness of our being, and see it as the "Year of the Human Being." When we drop the titles that refer to us in secular ways—traditional, non-traditional, urban, reservation, Christian, non-Christian, Sioux, Ponca, Hopi, Navajo, White, Black—we must remember that we inhabit this planet as human beings.

With that in mind, I'm grateful and my family is grateful for being allowed to come and to address you this morning. I'm starting my prayer in the way in which it has been given to me. I will pray in English because that's the language that we speak, and that's the system in which we have to deal with today. We cannot work in this world without knowing the English language. So if I'm going to appeal to our hearts and to our minds as one people, we must do that. I'm honored to be here and I am also mindful that we are on land of the first people here of California, and that in our hearts and minds this morning—as we come together—that we might remember them and reflect upon their contributions, as the energy of their ancestors permeates this earth, and we draw from that as we sit and walk here, and that we come together here, hopefully in one mind.

Mother, Father, Creator, we come together in one mind and one heart. We ask that you hear our prayers for strength, for all of those who come in attendance to work in this matter. We come in remembrance of the winged and four-legged, of the elders, and those who live at this present time. We come in prayer for a way to remember those who are yet unborn, for they truly shall lead us home. We give thanks for this facility and the energy which has been emplaced here so that we might have this opportunity to come together. We ask for the strength and well-being in our prayers and remembrances for all of those who have worked hard to make this time and place possible for us. We ask for the well-being of those who have traveled great distances to come among us, not as experts, but as human beings with something to share. Let us remember our humility as we address you. Let us remember our humility as we come together to enjoy the masculine and feminine energy of our total being, that as human beings, men and women, tribal people and non-tribal people, that we come together in the oneness of our connectedness. We give thanks for those things which have been granted to us which we do not remember at the opening of our eyes. We give thanks for those things that we do not remember at the opening of our heart. Let us as one, connected, human entity, only that part of the connectedness and creation of the universe and this world, work together at this time. We ask your blessing upon all of those things to which we are related, to all of those things that we will never see in our lives, but remember in our minds. We pray for the elders, and for those who are leaders within our nations. We pray for the leaders of the world. We pray for all people. We pray for those who are hungry and homeless. We pray for those who are sick and afflicted. We pray for those still within the confines of jails and prisons, and insane asylums and death row, for they are our relatives also. We pray for those still afflicted with the abuses of the spirit, the mind, and the body. We give thanks for this day, and the great mystery of our breath, and the continuance for each our purposes. Strengthen these, your children, that they might go forth from this place in good relationship. We ask this not for ourselves, but for all our relations. Thank you very much.

Loretta Howard: Thank you. Once again I'd like to introduce Daniel Edwards. I belong to the Yurok Tribe and, as some of you know, we've undergone some changes recently. We had an opportunity to option out. We didn't have to be an Indian. We got a big payment and then we could either terminate ourselves or receive a smaller payments and become a member of the tribe. I took the smaller payment. The check arrived December first like everybody's check did. Mine was torn in half, the numbers were gone and they wouldn't cash it at the bank. I waited 26 years and the check came torn in half. So I sent it back to the Treasury Department saying, "I hope I get this before Christmas." And when they read that, they must have all cracked-up, because you know how the government is. So I'm going to probably wait another 26 years before I get that replacement check.

I was raised in California and in Oregon. I don't know if some of you have ever been students at Chemawa, but the Northern California groups in Washington and Oregon, and the Nez Perce in Idaho, we all ended up at Chemawa. At that time, it seemed to be popular for two-thirds of the American Indians to end up in a boarding school. Then I returned to Oakland where I went to high school. My father worked in the Alameda shipyards.

I'm a social worker. I have a Master's and a Ph.D. degree in social work. One of the first jobs I had was in San Jose. What was fascinating was that I thought I was probably the first Indian MSW in the State of California, and there sitting right next to me is Elizabeth Black Owl. She also had her Master's, and we were both child welfare workers. I've often wondered if they sat us together because we were Indians. You know, there's something racist about that. I think that Elizabeth Black Owl is still in New Mexico now.

I've worked for the Bureau of Indian Affairs (BIA) in Alaska, and I was a social worker there. My territory included 28 villages in the Yukon. In fact, I still work up there off and on during the summer months. I worked for the Western Region Indian Alcohol and Training Center, the first Indian training center for American Indians in the United States under the Office of Equal Opportunity (OEO) period, the John F. Kennedy era—when this all began. Then I went to work for VISTA where I worked for mental health programs. Now, I'm working for the University of Utah in the Native American Studies Department. I'm also working with the Graduate School of Social Work. Additionally, I work part-time work for the Office of Substance Abuse and Prevention (OSAP). I'm an evaluator, and I go out to Indian programs that they fund and identify programs that are working. It's been a real eye-opener. You can read about it, you can know something about your own tribe or those in your region, but you get kind of a national perspective of what's happening, in particular, in the area of substance abuse and what programs are working. There have been some major changes.

In looking at the family, it's difficult to define the Indian family because it's not just the nuclear family. You have to take a holistic view of the Indian family. Vine Deloria has said something which was just said here this morning, when Vine Deloria was asked about religion, spirituality and culture, he said, "You have to remember two things. That everything is alive and that everything is related." In a sense, we belong to one family. Inanimate or animate objects are alive. Everything has a certain amount of power. And if you know, if you're a medicine person or a spiritual leader, you'll understand that, you bring a balance, what they call homeostasis, to one's family and to one's tribe. We look at the nuclear family, the extended family, clan systems, tribes, communities, society, even state. I notice Oklahoma and Alaska are that way. It's almost like they're an island unto themselves. They're one big family. We look at our country and the world, and some may even say the cosmos, as a family. But all living things are interdependent. We rely on each other. We have to live in one place.

As was mentioned before, the word human beings. Chief Dan George said, "The problem is there are too many people and not enough human beings." He was talking about the world family and how we treat each other. Another elderly Indian said, "All honorable people belong to the same tribe." I like that concept. The same race. We're the human beings. I don't remember the ecologist that mentioned that, "The earth itself is a space ship." This is space ship earth. There are no passengers. We all belong to the crew.

It's kind of complex looking at Indians. If you've seen one Indian, you haven't seen them all. I've heard that expression before. There's a common Indian language with ughs and hows and cow-a-bunga. If we're a homogeneous people, speak the same language, behave in the same way. That is incorrect. If there's 510 tribes, now if you're counting the Alaskan villages, too, of 200, there's 510 tribes. Then, there re are 510 cultures. There are some generic values, cultural characteristics that cut across all groups.

But our cultures are distinct as the French are from the English, or the Swedes from Bulgarians, or whatever. We're very, very distinct people. There are roughly two million Indian people according to the last census. When Columbus arrived, one of the demographers said there was at least 20 million Indians in North America, another 50 million in Mexico, and Central and South America. That's a large group of people. We dropped from 20 million when the census was first taken in 1910 or 1920, to 200,000 Indians. If you were mixed-blood, you would never say that you were an Indian. At that time, people were not all that proud. We didn't really focus in on Indianness as a positive value. That has changed a lot, beginning with Martin Luther King and the Civil Rights Movement. We are accentuating our Indian characteristics and embracing our language and culture more and more.

Approximately one-third of all Indian people live on a reservation permanently. About one-third of all Indians live in urban areas permanently. And there's approximately, one-third that are in transition. We're very mobile. In Salt Lake, the Indians come through there, forty, fifty different tribes in the summer. I used to do group work in the county and city jail, and I'd see Navajos, Yuroks, Hupas, and Sioux as they come through heading on to L.A., San Francisco, Denver, Phoenix, Gallup, and Rapid City. These are Indian cities, cities with large urban Indian populations.

Two-hundred different Indian languages are spoken. In a couple of hundred years, probably less than a dozen will be in existence. That's what is believed. Not all our children are speaking our languages, so they feel it will disappear. Fifty percent of Indians marry non-Indians. There are more mixed-bloods, less full-bloods, and some may say less traditional people. The median income is roughly $13,000 for American Indians, and $30,000 for non-Indians. Roughly 25 percent of our people live in poverty, versus 12 percent. I think it's more like 15 percent for the general population, but we tend to be in denial over that.

School drop-out rates for Indians is around 35 percent versus 28 percent for the general population. Indian female heads of households are almost 25 percent, that is where families have one parent, and it's generally a female who heads that family, versus 14 percent, 15 percent for the general population. Our alcohol and drinking problem drinking rates, about 35 percent, depending on where you go. In one reservation in North Dakota, this past fall they claim it's more like 90 percent of the population has drinking problems. That will vary from place to place. The general population is around a 12 percent alcoholism rate.

We are complex, and to understand those things, one should understand that, if you begin to teach, or to look at the problems, or look at how we develop effective programs for our people. It's popular to be American Indian now. According to the 1990 Census there's a 36 percent growth. People are, in a sense, coming out of the woodwork. When the census taker comes around, if they hear you have some Indian heritage or a Cherokee in your family, you say I'm Indian. You don't have to prove it. So we've experienced a huge growth because of the popularity. And sometimes I ask my students, "Why? We've got all these problems and you want to be Indian?" But there's something about being an Indian person.

I cut this out of a newspaper. It's an article on Manifest Destiny. There's a little cartoon to the side, and these two children are playing cowboys and Indians. I don't know if you remember that no one wanted to be the Indian some years back. Everyone wanted to be the cowboy. It's kind of the John Wayne syndrome. This one little kid who got stuck with the cowboy role, he wanted to be Indian because of that popularity I'm talking about, this is what he says to the child that's playing the Indian role, "How come you always get to be the noble, sensitive, environmentally-conscious American Indian, and I have to play the profit-driven, economically rapacious White invader?" I thought that was cute. Who wants to be the White invader?

Other things about the popularity. We do have an increased birth rate, but not at the 36 percent level. People are into ecology and nature movements, and Indians are seen as nature lovers and our reservations have beautiful environments. In a sense, we are still a Garden of Eden kind of people. It's a stereotype that we've had since the time of Columbus. Special benefits, money, resources. We now have over 70 groups that are attempting to become legal tribes—in the eyes of the federal government—because of these benefits and a number of other reasons. Identity is one of those reasons. Returning to one's roots. Going back to the blanket and traditional ways, or walking the "red road." I hear that term periodically. Indian culture, tradition, and religion is fashionable. In the courses I've taught, people want to know about Indian religion. They think we have something secret in our sacredness. They want to know what goes on in the kiva. They want to know what goes on in the sweats and the long house. They think that we have something that their churches do not have, and they're constantly pushing for that kind of information.

There is a resurgence in Indian identity. Tribes are swamped with applications for enrollment. Wilma Mankiller was at the University of Utah, and she indicated that she's got Cherokees coming out of the ying-yang. There are hundreds and thousands of people who want to be part of their tribe. There's a wave of Indians in urban areas that are involved in traditional practices like vision quests, Indian religion, and the sun dance. Those involved with spiritual leaders are concerned about learning their culture and their language, taking courses and embracing their Indianness. They want to be traditional even though they live in urban areas.

I recall when I was on the Navajo Reservation in the late-1950s and the 1960s, you didn't see a pow-wow. You know, the pow-wow, as we know it today on the Navajo Reservation. Now you see Navajos sitting around a drum singing northern and southern songs. You see the clothing. We have different costumes that we wear at these pow-wows. In those days, it was the Yehbechai, it was squaw dances, mud dances—the traditional dances. We still do those at our home, for instance, the Yurok Tribe brush dances .

As mentioned a little earlier, the 1992 has been declared the "Year of the Indigenous People," and President Bush signed an official act with Eddie Brown, Assistant Secretary of Indian Affairs, that this be the "Year of the American Indian." And the question is why? Because of the Quincentennial.

I think I would be remiss in not mentioning Columbus a little bit here. Five-hundred years ago, we know that Columbus landed in America. Note that I didn't use the word discovered. It's hard not to use that word because it's been so ingrained in me. The social studies department or the people in Washington D.C., they use that term. They sent a letter to all public schools that stated that Columbus was a person who brought two worlds into permanent contact. When I was in Missouri, St. Louis, one of the Indians said, "You know, thank goodness Columbus arrived." We looked at him and he said, "We would have never known who we are. We wouldn't know we were American Indians. We wouldn't know that our continent was devoid of culture and religion. We didn't know that history began with Columbus. So when Columbus arrived, we discovered ourselves." Then he says, "Aaay." We laugh, as well as cry about some of these things that are important to us.

Columbus' landing had an enormous impact on the American Indian family. It brought U.S. democracy and the notion of individual liberty and social justice to people throughout the world, with the exception of the original inhabitants. It altered science, geography, philosophy, agriculture, law, government and religion. This is seen as a triumph—a progress towards perfection.

Today, Columbus is eulogized as a nation builder, a romantic and a renaissance hero, and has even been described as a saint, that he was led to this continent by revelation from God. This is what I'm picking up in the material. There's an opposing voice. There is a loud chorus of opposing views with a different rendition of the same events. It is said that he brought infectious diseases. He brought the horse. We didn't mind that. He brought sugar. We're not sure about that anymore. He brought Christianity, and many of us embrace Christianity. Slavery, genocide, and, as one Indian put it, "Cultural holocaust." He brought ecocide, which has to do with one's environment. As another Indian described, "Hemispheric rape."

We're picking up these adjectives rather quickly in the last year. Worst of all, an invasion through colonialism, brought exploitation and near destruction to the American Indian family through policies of genocide, expulsion, exclusion, reservations, assimilations, boarding schools, the Dawes Act, relocation programs, and a whole number of policies designed to assimilate and destroy our culture entirely

That's what Columbus brought. I prepared this talk in Iowa and I was asked to talk about the pilgrims and Columbus. I thought, "No, I don't want to do that." But then I decided that I would, and I found the research for the lecture rather interesting. But I looked at some of the humor that I picked up through different Indian articles and some other materials, and this is what the cartoons and the humor pointed out. This Indian is talking to another Indian as Columbus and the pilgrims are arriving. He says, "Ask them if they plan on staying overnight". "One ship load? How much land can they use up?" "Well, there goes the neighborhood." And another one, "Our main problem is we have poor immigration laws."

And then one where the Indian started talking about Columbus and the rest of them all turned off. He says, "Talk about a conversation stopper." One that I picked-up says, "I don't get it." These are the Whites, the soldiers at that time. "We take their land, kidnap their women, and steal their crops, and still they insist we smoke their tobacco." In some ways, that's our revenge in what tobacco has done to people in this country.

One Indian father has his arm around his son and says, "Some day, son, none of this will be yours." It's the most tragic, but, in some ways, there's a lot of humor with it. Another one says, "Maybe if we leave them alone, they'll go away."

Vine Deloria says, "Columbus actually had four ships. More than the Nina, the Pinta and the Santa Maria. But one fell off the edge of the earth." I picked-up this information on how Indians got here and about Columbus and the different invasion periods. Deloria said, "We came from Asia and went across Siberia and the Bering Straits." And the guys says, "Well, why did you do that?" He says, "Because we could not keep our bearings straight." Have you ever seen bumper stickers that say, "America, love it or give it back," have you ever seen that?

When I think back on my own life when I first went to the Upper Yurok River. We lived about five miles down river at a place called Martin's Ferry, and then up on the mountain we had a ranch. I think every child, when you're dealing with the family, ought to have positive remembrances of their family.

I don't know if you go back and try to think of your family or think of your grandparents. I go back to my grandparents, and I can remember my grandfather very well. I can recall when I first stayed in our home outside of Martin's Ferry when I heard some animals. I didn't know what they were, I was very small and it was very frightening. It was hogs. And my grandfather picked me up and took me over to the window to show me that they were pigs and they wouldn't bother me. One of my first memories was him holding me and explaining that. I can remember him teaching us how to work, his teaching us how to do the brush dance. I'd give him his sticks and rakes, and we'd get in a circle and pretend like we were doing the brush dance.

Some of the negative memories that I have, I don't recall my age, but in Hoopa and then later at Wecpus at the brush dance, I saw two drunk men, that were lying in the dirt. One's face was partly in the mud. What bothered me was that I thought they were dead. People were walking around and scurrying around them in denial about what was happening. I asked my grandmother, and I remember she had some shame about what was happening. She explained that something had happened to this individual, but I still didn't understand. I still thought the that the person was dead. So that was a negative viewpoint that I had.

We've come a long way since that time. We're not in denial as much over alcoholism. Programs are being developed.

Dan Edwards: Yet we are still effected by alcohol. The Gallup Poll says, "One out of four families in the United States are effected by alcohol. I think it was ten years ago, that it was one out of nine families, so our problem is increasing nationally. With American Indians, and I've gone to several reservations in

Minnesota and Wisconsin, in Alaska, in Montana, down into Arizona, and in San Francisco we went to an urban project, I asked that question and, undoubtedly, there was 100 percent of our families that are effected by alcohol. In fact, not one person, has not been substantially effected by alcohol, not one in our societies, because we have more than a nuclear family. With the tribe, one pain is everybody's pain. In our extended family, one pain is everybody's pain. Conversely, the joy of one, is the joy of everybody else.

With children, alcohol effects American Indian children at an alarming rate. Fetal Alcohol Syndrome (FAS), Fetal Alcohol Effects (FAE), we're now calling this illness alcohol-related birth defects. We don't even begin to understand what has happened to our people. I was sitting in a restaurant with Dr. May who used to be in charge of the fetal alcohol program in New Mexico some years back, Spiro Manson and John Red Horse, and we were talking about what happened on the reservations. Some of them have a very, very serious problem. And Spiro said, "The concern was FAE because it's insidious."

We don't know. If our parents are drinking and we are then born, how many points of our IQ have dropped? We may be fine physically, but what happens to our leadership? What happens to the people that are going to carry out our programs when many of us are gone? We don't know that yet. We don't know what the effects are. But FAS is a full-blown, complete physical problem that is extremely complicated.

Parents who are drinking cannot provide the kind of healthy environment that children need spiritually, culturally, financially and educationally. They just cannot do that while they're caught in the alcoholism cycle.

I remember my father. I'm an adult child of an alcoholic, two alcoholics. Tough with one, but try two. Some of you have, I'm sure. He used to say when he was sober, "There may not be enough money for food, rent, payments, or to buy a car, but there's always enough money for booze. Not enough time for family activities, for reading stories, but there's always time for drinking."

An article out of a magazine discussing the effects on our children throughout the world and in tribal groups says, "Young tribal people are shamed, or view traditional ways as illegitimate or irrelevant." That's happened in our history. People say, "Tribal culture is barbaric and primitive," and some of our children listen to that. Young people turn away from their elders, breaking an ancient but fragile chain of oral traditions.

According to linguists, 3,000 of 6,000 languages will disappear because children will not speak them. And that's happening in Indian Country. If a language disappears, traditional knowledge tends to vanish with it. It's true. It is estimated that only 300 languages have a secure future. With the loss of language, knowledge and traditions, the soul of our culture withers away and dies, and we have to start developing new cultures.

I found it interesting that traditional birth control has been lost among many tribal people. Where they've had maybe three, four or five children, now they're having more than ten because the knowledge is gone. Gift giving, exchanging a lot—you know, Indian give-aways—serve to seal bonds among families and acts as a barrier to poverty and loneliness. We move the wealth around, and help people have a number of things that they normally wouldn't have through our giving and generosity.

A medicine man is a healer. There are approximately 265,000 species of plants on our planet. Only 11,000 have been thoroughly studied. Forty-thousand plants have a medicinal or undisclosed nutritional value for humans, and we're losing that. We're losing those plants in the Amazon which is considered "a rape of the forests" in that region. It's a very somber story that we hear.

Teaching children about addition, or teaching them about some of the alcohol problems that we have, storytelling is very effective. I like a couple of stories about snakes.

One is about an Indian that is fishing. This Indian is a social drinker, by the way. And he's not doing very well, so he finds some frogs, puts them in a bucket, keeps it right by him, and then he uses the frogs as bait and throws them out there. He's doing fairly well. Well, a snake comes over and see those frogs, sticks his head in there and starts gobbling them up. The Indian looks at the snake, gets a little angry, and kicks the snake into the bushes. And the children are all listening just like you are.

The Indian kind of laughed about it and started fishing again. He reached down to get a frog and there was that snake again. So he reached down and grabbed that snake right by the neck, squeezed it until its mouth was wide open, reached in his pocket and pulled out a little flask of whisky and poured it in the snake's mouth, held the jaws of that snake together until the alcohol went down it. The snake was withering around and flopping around. He threw him on the ground. It flipped and flopped, went into the bushes, and you see the bushes shake. Well, the Indian laughed about it. Well, that takes care of that snake. He went on fishing. Pretty soon, he felt something on the back of his leg just kind of like this. (*Knocks*) And he looked down and there was that snake. Instant addiction to alcohol.

An Indian was working on his farm. It was late in the fall, things are starting to freeze up. He was flipping a clod of dirt over and there was a snake. It was frozen, but it wasn't dead. It looked up at him and said, "Would you please help me?" And traditionally, we believe that we can relate to animals and communicate with animals. And he says, "I'm not going to help you. You're a poisonous snake." And the snake says, "Please, I won't bite the hand that feeds me or takes care of me." And so the Indian picked up that snake, undid his shirt, and pushed that snake in around his waist. And then it closed around his waist and around his warm body. Then the Indian continued working, doing his farming chores until it was around five o'clock. He undid his shirt and said, "I'll have to take you out. My wife won't allow snakes in the house. I'll put you in a warm place under a rock where you can hibernate and live." As he was talking, the snake reared back his head and bit the Indian on the face. The Indian fell down and was in anguish and said, "Why did you do that? I may die, but you surely will. You'll freeze to death." And the snake got tears in his eyes and said, "I can't help it. It's my basic nature to bite."

And you tell children that and they listen very closely. It's like striking a match, children lighting matches. What is the basic nature of that match? With alcohol, what is the basic nature of alcohol if used in indiscriminate ways? They can understand and relate what alcohol can do to the human body and what the basic natures are.

Adolescents. Living on two islands. An Indian told me this, that he would join his family on their island and have a lot of fun. However, he would leave it very rapidly when his father or his mother would start drinking. Trying to gulf those two islands, an isthmus developed, and it was very, very difficult. Indian adolescents deal with normal problems like most adolescents, but we also have problems that only ethnic minority people have, that non-minority people do not struggle with. We deal with identity problems. We deal with things to do with Indianness and how we fit in the general population. It's difficult.

Indian adolescents who seem to be making it are those who perform effectively in both cultures, and they are significantly better off when they can learn those two roles. An Indian, at the Soaring Eagles Project in Minnesota, said, "That he trains his children to live in both worlds." He is the cultural director of that program. He says, "When his children want to do something in high school, play football, be a yell leader, be in the acappella choir, he's there, he supports that. When they want educational workshops in the summer, he supports that. But he teaches them how to dance, he teaches them how to drum, he teaches them traditional ways, he teaches them about the sweats, the longhouse, all those things so that they're prepared." He does this so that they have, in a sense, the implements in order to make it in both societies.

One of the questions I asked at a school where I was at some time ago was, "What their paramount problems were?" The said, "Missing school." The school was a boarding-school. And I said, "What kind of illnesses or what kind of problems?" And they said, "It was an illness and they had to go do the eye test." And I said, "What type of illness?" And Wilma kind of looked at her feet and she said, It was venereal disease (V.D.), our children are very sexually active and that they have a rampant amount of V.D., and they have to go to the Indian Health Services (IHS) to treat that.

Adolescents are seeing drinking behavior as Indian behavior. Awful when you think of it. Adolescents see heavy drinking or abuse of alcohol as a rite of passage. Also, smoking, stealing, early sex, other drugs are all part of the non-traditional rite of passage. Traditional rites of passage would be hunting, fishing, vision quests, singing, dancing, drumming, games of skill, games of strength, predictive type of ability, and other gifts that we may have. These are traditional rites of passage. Some of these things are disappearing and we have to get our youth to look at that differently.

Numbers of Indians that I have met, young adults, don't know their history, they don't know their culture. Some of them got the tail-end of a relocation or employment assistance program. Many of them are taking classes. Many of them are saying, "They're embarrassed because they don't know their culture." Some of them are saying, "They wish they were more Indian, that they look more like Indians, and wished that they could understand and think like Indians in their own languages." Many of these traditions disappeared with the boarding school programs.

American Indians are the fastest growing AIDS group in the nation. The Blacks and Hispanics, it's kind of nip and tuck, as to who has the most serious problem. We have over 300 Indians who have AIDS today.

I don't know if you've read the Crow Indian story about their youth. They have the tremendous basketball players, athletes at the All-American level. However, they never make it into the universities. And the question was why? They talked a little bit about their culture, their history, and some of the drinking problems, but there was tremendous peer pressure not to succeed. You've heard that. When we begin to succeed, someone pulls us back down. There's a fear of people getting ahead and there's a large support of sameness. People ought to do the same thing. People ought to behave the same way. And so many return.

I have a story that Ken asked me to tell. He said, "You're going to tell that eagle story, aren't you?" Stories are fun. I've found that even adults like stories.

This Indian is walking down the road and he sees this eagle with a group of turkeys. He went over and looked just to make sure that his observation was correct. And here is this eagle clucking around with these turkeys. So he found the farmer and asked him, "What goes here?" And the farmer laughed and said, "It was kind of strange," and then he told a story about this eagle. It was an eaglet and it fell out of the nest. The farmer tried to find the nest, but he couldn't. So the he took it home, took care of it, and it grew up. He grew attached to the eagle and vice versa, and he wanted to keep the eagle. So he thought, what better way than to put it in with these turkeys. That's how he made his living. And the eaglet would think that these turkeys are his brothers and sisters. He'd become a turkey and he'd never leave. And that's what happened. He would not leave.

The Indian said, "That's not right. According to our traditions..." And he talked about Indian traditions and eagles. And the farmer laughed and he said, "He's not going to leave." The Indian then said, "Let me have a chance." He went over and picked up the turkey and threw it in the air, hoping it would open his wings. The eagle flopped down and then went back to what he thought were his brothers and sisters.

He then asked for permission to do it again. He took the eagle, went over to the barn, got a ladder, went on top of the barns. And barns are traditionally very high. He took that eagle and threw it off the barn roof. The eagle was flopping around, landed on its breast, and went clucking back into the turkey pen. The Indian then climbed down. He was more a passive, than aggressive Indian. He took that eagle again and went to a canyon.

In Utah, we have what they call "Dead Horse Point," and it's up about 800 feet. It's a huge, huge canyon, and it's very, very beautiful. And that's what it sounded like to me, that he was trying to throw the eagle off "Dead Horse Point." The eagle was hanging on for dear life. Finally, he broke him loose. The eagle went flopping over the side and was flapping around, and he figured it was all over with. Well, a female, a beautiful female eagle spotted that young male and she went swooping by and gave an alluring kind of screech. He looked up at her, saw her and how she flew, opened his wings, soared down the valley with her, never to return.

There's a different morale to that story. One I use is, if you're out soaring with the eagles, you can't associate with the turkeys. That's understandable. The other is, it is difficult to soar like an eagle, when you think and act like a turkey. Two, if you're going to soar like an eagle, then you must place yourself in the most growth-promoting circumstances possible. That's a good message. Three, everyone has a capacity to soar with the eagles given the right motivation. That's really true. We have the innate ability. Well, there's a few anecdotes.

There is much inside of each of us which can be set free. Given the right motivation and opportunities, we will soar with the eagles. And we have to provide for our children, so that they too can soar with the eagles.

There is a lot of guilt among adults about drinking, and what has happened in their past. I was asked to give a talk in Rapid City. They wanted me to give a three-hour presentation on elderly Indians and alcoholism. I thought, I don't know any Indian elder that drinks—all Indians quit drinking at age forty-five. That's a myth. Many continue drinking or many start again. So when I went to these different reservations, I asked that question about the drinking habits among the elders, and there's a lot of shame. Some of their elders are drinking, and some of the elders are being abused. Some reservations have special homes, where the elders who are abused by their own children can go for time-out and get away from their children.

The other myth is that because you're an elder, you automatically know everything about tradition and culture. And some of the elders tell me, "I'm learning." One said, "I was in boarding school, and at boarding school, tradition was drummed out of us. So when I returned home after twelve years away, I don't know a lot about my culture, but I'm learning and I want to provide that for my grandchildren and for the people of my tribe." So there are problems with that.

The program that's working is a community approach. And I'll just tell you this, that the elders are involved and the community approach has a cultural base. Everybody's involved in the tribe. I've seen this up in Flathead Lake, and I've seen this beginning in some of the Alaskan villages. That everybody's committed—the BIA, the IHS, tribal programs, religious programs, state, and federal agencies. Everybody is committed to the eradication, or at least the control, of alcohol at its beginning level. I've seen where people are not denying it anymore. Where they say, "Oh, I've got a little problem. I drink now and then." A lot of this denial is disappearing, and I think that is important that we're up front and admit the kind of problem that we have—and that is happening. In some reservations, you have to have two years of sobriety before you can run for the council. Others reservations, you have to have sobriety and one of your planks has to be an alcoholism prevention treatment program.

Wilma Mankiller said, "We got ourselves in this mess. Now we have to get ourselves out." Others have said, "That the problem began in the community. It has to be solved in the community." We have to quit focusing on identifying the problem. We have to begin focusing on ways that we can eradicate the problem, solutions, the process, itself, of developing solutions to eliminate the problem.

Just one last story. I think all of you have stories and feelings about your family, but this one is really important to me. When my brother and I were quite small, we didn't have electricity up to our home. We had an old washing machine that was run by a small motor. Some of you remember that very well. Maybe some of you still have one like that. But if you take a wire when the motor is going and touch it against metal, the machine would stop. My brother and I had done that on several occasions, and my grandmother got a little angry.

She took us to the back porch and told us a story about the great owl. We listened because the owl has kind of a seamy sort of connotation to it. And she said. "There was an owl that comes out of the Trinity Mountains. It is huge, and its wing span would touch that wall." It would also touch this wall in my mind when she told the stories. I said, "What does that owl do?" She said, "On this reservation, if there's really naughty children, we put them out on the back porch late at night and we lock the door so they can't get in. This owl flies around and identifies those children that are the naughtiest and the nastiest of them all, flies down with these huge talons and pick those children up, takes them to the Klamath River where there are small islands, and deposits those children on those islands where they stay forever."

We listened and we got kind of scared and concerned about it. You kind of snicker a little bit because you're not sure. Well, the next day we're heading to Wecpus and we're going along the dirt road. I look down at those islands and my grandmother said, "What do you see?" And I said, "Look, there's no children on those islands." She said, "You look again. You see those rocks and boulders? They are children. They've sat there for so long, they turned to stone." That, to me, is just a beautiful story.

I hope that all of us here are human beings, that we all can soar with the eagles. And let's not end up on that island. Thank you very much.

Loretta Howard: Thank you, Dan, for that inspirational talk. At this time, I'd like to introduce Kevin again. He's from the BIA Office in Sacramento, and he'll discuss the procedures that we're going to use in getting our opinions and voices heard.

Kevin Sanders: This topic will be something that's close to everyone's pocketbook, who is involved in the delivery of child and family services on Indian reservations, tribes and tribal organizations, and in urban areas. I guess that pretty much covers it coast to coast.

Basically, what we have is a mandate from the tribes—people like yourselves, your leaders, those of you who operate child and family service organizations. But particularly, from tribal leadership nationwide, there was a mandate to the BIA to restructure, a new way to distribute the Indian Child Welfare Act (ICWA) administrative funds, which was found in Title II of Public Law 95-608, which is the ICWA. In that Act, that titled section provides for the operation of child and family service programs on Indian reservations, and at Indian organizations.

The mandate has been several years in coming, probably all the way back to 1979, when we made the first distribution. It's always been a competitive grant application process. In other words, a paper competition, which satisfied no one, except those groups who received grants every year, and they were barely satisfied. The problem being, that there is always somebody left out. There's just so much money to go around. Since people had to compete for the money, someone was always left out. Here in California, since I've been here anyway, we'd have about a $1.5 million applied for, requested for in a proposal. Last year, we were able to fund $720,000 of that, which led to eight projects being funded in California.

What we've done throughout the years is gotten input from the tribes. Three months ago, we met in Denver, Colorado. I know most of you who are here today, were probably at that meeting. It was a national consultation meeting about what we should do, what you want us to do to get the money out. This year, Congress has appropriated about a 50 percent increase in the funds. Nationwide, we used to get about eight or nine million. This year, we're getting about $16.5 million .

So, hopefully all of you did receive the packet that was mailed to every tribal leader. Some of you have brought those with you. There are nine proposed formulas in there, ranging from just basically a twelve-way split, which means that there's twelve area offices. Each area office would get one million or so dollars, and distribute it within the area. Ranging all the way from a simple twelve-way split to a very complex, per capita based, population based, age-based type of formula with incentives built in for different groups, different amounts of people in certain age ranges, and mature programs. It's all in there.

So this morning what I want to do, rather than me stand up here and tell you what's in there and what I think about it, which is really not too relevant today—it's really what you think that matters. There are a couple of you who have asked to address the group about their feelings about the formula. If there are others of you in here who want to speak, let's not say speak to us, but speak with us about this, feel free to come up and just take your turn at the microphone.

We'll have approximately thirty minutes or so to do this. We need to move on to the workshops. So without further ado, the first person that will speak will be Jan Goslin from the Association on American Indian Affairs (AAIA).

Jan Goslin: I work with the AAIA out of New York. I know quite a few of you. I live in Eureka in Northern California. My responsibility is to work in California, and in Washington State. I have recently been involved in Minnesota, working on state tribal agreements. Part of my responsibility, too, is to assist the National Congress of American Indians (NCAI) with their Indian child welfare advisory committee, which was recently established last year in Albuquerque. So, what I want to do is briefly update you on what we've been doing on Indian child welfare with the BIA. I was hoping that Dave Hickman would have been here for this conference, but I found out yesterday, that right now Dave is in a meeting in D.C. with Tom Tremain, who is an attorney of legal services out of Spokane, Washington. He was also asked to come in. Also, Jerry Bridges who is an ex-BIA social worker at Anadarko, and Judy Baggett is also back in D.C.

But the reason that they're back there is because the BIA is going through a process of looking at the general assistance (GA) program. I don't know how many of you are familiar with what general assistance is, but, basically, in certain states, the BIA has a responsibility of providing GA to the tribes. In recent years, the States of Washington and Oregon have implemented a GA program because of a lawsuit that was triggered by Tom Tremain and a tribe up in Washington, where, even though the State of Washington was providing a GA program, it wasn't comparable to what the BIA was doing. So, the BIA had to put money in.

The State of California could also be eligible for GA monies. For many years, the problem that the BIA has had with GA, is that it's a costly program. And so now, what they're talking about doing is taking the GA program, and sticking it into the tribal priority system in their analyses. The concern is that by doing that, what they're really trying to do is limit the GA program. And as far as we are concerned, we have an overriding concern and it's been an ongoing concern for a number of years, is the lack of consultation with the BIA on decisions involving social service issues and child welfare issues. So part of what we've been advocating for has been establishing an advisory committee to the BIA.

We met with Ed Brown at the mid-year NCAI in Reno. We met with him at the NCAI conference that was just held in San Francisco, and we talked about establishing an advisory committee to the Bureau of Social Services. We've got a commitment to have that committee established. Part of it, would be dealing with issues like this policy decision that the BIA is making on GA. That was something that wasn't discussed with the tribes. It's something that really is, more or less, a secret right now. In fact, they probably don't even know that I'm bringing this up today.

Basically, at the BIA meeting in Denver on the grant formulas, a meeting that was convened at the last minute, there were a couple of formulas that were faxed-out a couple days before the meeting, and nobody really had any time to look at them or think about them. Yet, they expected the people there to come up with a decision and reach some kind of concurrence on what would be the best way to approach the problem.

With the Bureau grants program, we ask that they put together some formulas and send them out for comment and review by the tribes, so that's what happened. At NCAI recently, we were able to get the National Congress to make 1992 the "Year of the Indian Child," and that's something that we tried to do last year, because of Columbus. So the theme for the annual NCAI meeting to be held in Washington, D.C. next November, will be the Indian child, so we're going to be promoting that and looking at the best way we can raise the awareness on child welfare. We've been able to do it and get a lot of tribal people, tribal leaders, aware of what the issues are, and we're going to continue doing that.

So, if anybody has any questions or wants to talk about more of these things, we're going to be doing a workshop at 1:00 P.M. on tribal/state agreements with Jack Trope. I have a letter that we sent to Ed Brown from the NCAI ICWA committee, and we'll have copies available for you. Thank you.

Loretta Howard: Thank you, Jan. Are there any tribal representatives out there that would like to come up to the podium, to voice your concerns and share with us some of the things you've studied? We have one individual by the name of Rosemary She is representing the Cedarville Rancheria from Northern California. Rosemary, will you please come up. Incidentally, I work for the Modoc Indian Health Project, as was announced yesterday. I currently run the Indian child welfare program there.

Rosemary: I was hoping there would be more tribal representatives. I also work for Modoc Indian Health in the alcohol prevention program, and I'm also the tribal administrator for the Cedarville and Alturas Rancherias. We have an ongoing Indian child welfare program, and the problem we're faced with, under the new proposed regulations, is the exclusion of tribes with less than fifty children. A lot of tribes in California and Nevada, and probably Alaska, will be excluded if that goes through. The problem that we have with it, is that the whole idea of the ICWA, is based on tribal sovereignty and the right of tribes to intervene and get involved in matters affecting their member children. If you believe in that for tribes, if you believe in the tribe's right to do that, then it seems inconsistent that anybody could support a funding formula that excludes a federally recognized sovereign tribe with less than 50 children.

We were at the Denver meeting and the consensus that came out of there was a one million dollar distribution to each of the areas. We went along with it because we thought, at least, we have a chance if the Sacramento area received one million dollars. The two tribes, that would have lost funding under that are the tribes, that presented that option, and they were behind it. With the remaining money, they would have received a proportion of their loss back from what was left, after each area received one million dollars.

Unfortunately, Washington D.C. says it doesn't meet the legal test of fairness. But that was a consensus opinion that

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came out of the group in Denver. Most of the other options continue to exclude tribes with less than 50 kids. Some have put a 75 child minimum. And when they offer incentives for consortia, they put added requirements on tribes that go the consortium route, such as priority will be given to states that already have tribal state agreements.

Other constraints are put on tribes that are going to be forced to form consortia under this. Also, the amount of money available to consortia, may not cover the wide geographical area that a consortium would have to serve. So we're against that. We were hoping that some other small tribes, that may be at this meeting, that stood to lose under the new proposed regulations might get together. The other problem we had with it, was the use of the labor force report, and a lot of people have a problem with that. In big areas, back East, the Mid-West, the Southwest, the Navajos—I suppose if you have people living near the Navajo reservation and they're Indians, and I'm assuming, maybe I'm not assuming correctly—but they may be Navajo. If they're living near the Sioux reservation, they may be Sioux.

In California, you have a lot of children that are members of tribes living near a reservation other than their own. And in the Labor Force Report, the only children that are broken out in the sixteen or under sixteen, are those tribal members living on the reservation or members of that tribe living near the reservation.

We're proposing that a much more efficient method for counting children would be in the Indian Health Service Patient Registration system. It's computerized. It counts children, it counts their tribal status. In five minutes you could pull out the children eligible to be served in your service area, whether they're tribal members or whether their parents are, which still makes them eligible under the ICWA. It's computerized, it's mandatory, it's nationwide.

The only redeeming thing about the Labor Force Report is that the tribes put it together themselves, but the instructions weren't that clear. I had to call for assistance from the BIA. And the way they told me to do it, we have no children. Maybe we have eight, whereas we have 60 that belong to other California tribes living near the reservation that weren't counted. So I'm hoping that if there's any other small tribes here today, that they might want to get together and form a position.

Loretta Howard: Does anyone have any questions regarding some of the things she said and how it will effect your tribe? We were encouraged yesterday by Cecilia Fire Thunder to get a hold of those proposed distribution formulas, look at them and really study them. I have to say that Rosemary, our director and myself, have really looked at the issues. And she's covered everything that we discussed and considered, and I think the rest of us need to look at those. They're really going to effect the smaller tribes, as well as those tribes that are currently serving Indian children under other programs. My program also includes an Indian education program. I'd like to make us aware. Everyone needs to really look at those.

We've been very successful in receiving ICWA funds for the last two years, and we'd like to continue. I'm speaking, not only on my behalf because it's my job as the social worker for the program, but for our American Indian children. We cannot forget the fact that that's why we're here. Congress' attempt in passing the Act was not to exclude, it meant to include any Indian. Tribes can apply for these funds. So we've got to consider every tribe, not just the big ones.

Jan Goslin: There are some of us who are not all concerned with the same issues, and I was wondering if maybe those of us who are concerned with specific issues, if there is some time that we can make available to talk today. Some of us came specifically to talk to Mr. Hickman about those issues. In my own circumstance, I am with BIA and represent three tribes who do not have funding. So they are very much concerned with how to get funding, and what we need to do to organize.

Loretta Howard: Why don't we allow about twenty minutes. We'll meet outside on the patio for those of you who want to stay around and discuss the proposed distribution formulas. For those of you who would like to move on to the program and attend the workshops, you are free to do that.

Jan Goslin: At 12:00 P.M., we want to have a lunch meeting of California people to discuss some of the ICWA formula concerns that are specific to California. But we can go out there and talk about the Title II issues. I know we've been in constant communication with the Bureau in the last few weeks, ever since the NCAI, on what's going to happen with the formula. We have a concern not only about the formulas and what formula that they pick, but we also have a concern about the way that they're going to administer the program.

Those of you who were in Denver, when the question was asked, "What is the application criteria going to be for noncompetitive grants," the Bureau brought it out and went over it. And one of the concerns I had was that there was a requirement that the tribes have mandatory insurance. Now, I think that it's issues like that—that are up to the tribe to determine whether or not they have insurance—and I know there are some tribes that feel as though they have sovereign immunity, and as long as their employees are operating in a competent manner, they don't have to concern themselves with that. But to make a requirement that you have mandatory insurance before you apply for a non-competitive grant, that's a very crucial issue.

The ICWA regulations, the Indian Child Welfare regulations that they were working on are going to be mailed out soon, and there's going to be another comment period. Then those regulations are going to be an interim rule for this next year. We felt that there wasn't enough time, that not everybody had an opportunity to look at that and look at those regulations. So they're going to publish them and they're going to be an interim rule for one year, and then we'll have an opportunity to look at the regulations, and get some consensus, as well as get more input nationwide on how that's going to be handled. But those regulations are going to be directly related to how the Indian child welfare grant program is going to be handled in the future. Thank you.

WORKSHOP 1

Funding Programs and Grant Writing

(Thursday, January 16, 1992)

Facilitators: Susan Badger, *Program Officer*, James Irvine Foundation; Judy Spiegel, *Program Officer*, California Community Foundation; Russell Sakaguchi, *Program Officer*, ARCO Foundation

Susan Badger: Good morning, my name is Sue Badger and I am a Program Officer with the James Irvine Foundation and my colleagues, Judy Spiegel from the California Community Foundation and Russell Sakaguchi from the ARCO Foundation, are delighted to be with you here this morning. The way we set this workshop up is really an introduction to grant writing in the private sector. Our preliminary sense, is that there is a lot to learn on both sides. Certainly from the grant maker's point-of-view, in the private sector, among the three of us and our colleagues, we have had very little contact with the American Indian community. It is also our sense, that there is a fair amount of inexperience on your side in dealing with private funders such as ourselves. So, we look at today's workshop as an opportunity to get acquainted and learn about each other. We would like to start out by knowing who you are, where you come from, and what organizations you represent, because I think it will be helpful to us. So we would like to quickly go around the room and get a sense of who you are.

Jeff: I am Jeff, I live in L.A.

Debbie: My name is Debbie Collins

Scott: I am Scott Barnes, Supervisor of Child Protective Services (CPS) for the Apache Nation, White Mountain, Arizona.

Bart: My name is Bart Kousley, the Executive Director of North American Indian Cultural Centers in Ohio.

Ken: Kenneth Wedle, Professor, School of Social Work, University of Oklahoma.

George: George Miller, Department of Children Services, L.A. County.

Leonora: I'm the Indian Child Welfare Coordinator in Juneau, Alaska.

Darlene Franco: I represent the Indian Counsel located at Visalia, Central California.

Lucinda: Watumi Counsel.

Randy: Paiute Indian Tribe of Utah, I'm the Director of Social Services.

Woman: I work here in L.A. with the Southern California Indian Center in the Child County Services Department.

Robin: I am an attorney with Spokane Legal Services representing the Spokane tribe.

Martha: State of California.

Woman: Indian Child Welfare Act (ICWA) Counselor from Utah.

Kathy: I am a social worker form the County Department of Social Services.

Elizabeth: Indian child welfare case worker, Bush, Washington.

Gene Madrigal: Attorney in California.

Marc Mannes: Professor, Department of Social Work, New Mexico State University.

Beverly James: I am from Northern California.

Jeanine: I am a tribal social worker, an ICWA worker from Northern Minnesota.

Les Lincoln: I represent California Native Circle.

Jane: I am the Director of Human Services for the Minnesota Chippewa Tribe. I have a question. The material that you are going to represent today, will this also be applicable to people that are not in California, or are you only going to talk about California foundations?

Susan Badger: Judy and I represent foundations that only fund in California, however the ARCO foundation funds nationwide.

Jane: Are you going to be teaching us some things during this time that we can apply to other states.

Susan Badger: To any funder. To any private funder. We have set this up, and I hope the schedule allow enough time for questions. This really is an introduction to what private sector funding is all about, how to work with foundations. So, it is not generic information that is specifically to California.

Ollie Harrison: I work at the Bureau of Indian Affairs (BIA) in Palm Springs, California.

Barbara Norris: I am from Redding, California. I am with the BIA up there and I'm in charge of operations.

Woman: I am with the Department of Children Services, Indian Unit, here in L.A. County.

Man: I am Director and Coordinator for my tribe Oklahoma. I hope to pick up some more grant writing skills.

Russell Sakaguchi: How many of you have written to a foundation or a corporation and received any funding?

Susan Badger: How many have written proposals to foundations, period? Okay, that is helpful. We would like to give you a little sense of who we are and how we do business, and as I said, leave lots of time for questions. I think the first thing, if you are looking at that vast sector called private sector foundations and corporations, the first thing you need to understand is how diverse we are. While we are funders, our common our roots are very different. You have sitting in front of you representatives of a private foundation, which is mine, a corporate foundation, and a community foundation. And my colleagues will introduce themselves a little bit more at length and tell you what each of their particular spin means.

As a representative of a private foundation, I think you need to understand where many of the private foundations come from in this country. The big ones, the names, the Rockefellers, the Mellons, the Carnegies, and in California the Irvine Foundation, are really resultant of the American free enterprise system. They were started by men who made an enormous amount of money, and created a private trust. And in the early days of administering that trust the men themselves, and or their families, were very involved in how that money got spent. As foundations evolved to the point where, for example the Irvine Foundation is now fifty years old and the founder is long since gone, there are very few family members involved in its administration. The foundation now has a professional staff. We have guidelines and a mission statement. We have evolved over fifty years, however we still reflect, in our funding, the kinds of interests that Mr. Irvine established way back in the 1930s when he was still the sole proprietor of 98,000 acres of Southern California, which is now approximately one-third of Orange County. But Mr. Irvine, even as an entrepreneur and as a very successful business man, even in the 1930s, did not oversee the amount of wealth that land would generate. The land grant was made in the middle of the last century. There was nothing but cattle on that land. Then it became agricultural. And now, of course, in the last fifty years as development has taken over Orange County, the land is worth, not only millions, but billions of dollars. The trust was created in 1937, separate from the Irvine Company interest.

Now, as many private foundations are, we have a level of staffing that was not the original intent of the family. The staff, which represents the board of the foundation, has a certain amount of control over how those dollars are spent, although it is ultimately the board's decision. We have guidelines that are published, and if you would like to receive a copy of the annual report, I can give you my telephone number and you can call and ask for one. It is 213/236-0552.

Like many private foundations, the Irvine Trust was established by a deed of trust which has certain limitations in it. The limitations for the Irvine Trust are that it was established for the people of California, which means that we only fund non-profits in the State of California for the benefit of Californians. We also have another restriction, which is unique to us, in that Mr. Irvine was very much a man of his time in the 1930s. He believed that anybody who got public money really should not get his. And so he said in his charter that grants may not go to entities which receive a substantial proportion of their revenue from taxation. Which means that whether you receive revenue from the feds, the state, the county, or the city, wherever, if the percentage of your revenue from public sources is above a certain level, you are not eligible to apply to the Irvine Foundation.

Unfortunately, for us this has meant even more limited involvement with the American Indian community, because so many of the non-profits are funded through the BIA and other public entities. However, I am proud to say that we have been fairly creative in finding some ways to be helpful, for instance, through the American Association on Indian Affairs, which approached us three years ago. We are the major California funder of the effort to establish a state tribal agreement for the ICWA in California. So we have had some experience, but it has been limited. I will now to turn to my colleagues, and let them introduce themselves, so they can tell you how community foundations and corporate foundations are different than private foundations.

Judy Spiegel: Hi. My name is Judy Spiegel, and I am the program officer at California Community Foundation, which despite its name really only funds now in L.A. Seventy-five years ago, the California Community Foundation was established, and at the time it did fund throughout California, unfortunately over time its parameters have shrunk, as most community foundations have grown in various parts of the state. And in fact, we played a part in trying to see that community foundations are established, particularly in the surrounding areas of L.A.

Let me first say what is similar. What we have in common with many of the aspects that Sue talked about. First of all, our board of directors are responsible for the majority of grants that we make. We also have a staff of program officers who review proposals, do research, and go out and meet with applicants, and then make recommendations to the board of governors as to what we are seeing in the community, and what we think would be a good investment, so to speak. Where we differ and where the community foundation, when it comes into play, is that community foundations are literally the holders of community members' money, in the community that we reside in, which is why we think it is so important to see new community foundations pop up.

For instance, as of two years ago in Orange County, the Orange County Community Foundation was established, which used to be an area that we served. There is a Ventura County Community Foundation, a Riverside Community Foundation. There is even a Glendale Community Foundation. So, in virtually every state in the United States, there is at least one community foundation. Some states have several. Some cities have several.

Community foundations look to serve the needs of the community. Generally, their money comes from people who have for the most part lived in—for instance, we get our money from people who live or have lived in L.A. who may not have masses and masses of wealth. It may not be in the millions of dollars. It may be in the hundreds of thousands of dollars. And in some cases, people who have money in the tens of thousands of dollars and less who say, "Gosh, I really want to do something with my money to help the community that I live in. I have this particular interest. I would really like to see my money go where it will count, but I am not sure that I am the person to make those decisions. So would you hold my money, would you invest it wisely, and make sure that it makes money and you make the grants." And that is what we do. A lot of our money comes from people who leave it to us in their wills and who say, "This is where my interest is, this is what I would like you to do." Our commitment then, is to make sure that, in fact, their dollars are spent on the areas in which they say they are interested in. You have a copy of our annual report, and one of the things that you will find as you look through it—not right now, but we will talk a bit later about why annual reports are so important. There's a section in the report that lists the donor's names who have contributed their money to the California Community Foundation.

Some of those people are alive and they say look, "We want you to do the work and we want you to tell us who the organizations are around town, but we want to be the ones to make the decisions." And they leave their funds in what are called donor designated trusts. And you will see those listed. They are usually family names, and they say very specifically how they want their money spent. They are, in fact, the decision-makers.

Some people leave their money to the California Community Foundation in what are called field-of-interest funds. And what they say is, "We are interested in homelessness or we are interested in seeing that people get the kind of care and treatment that they need for diabetes and Alzheimer, and a variety of other diseases." Or they will specify a broad category, like health care. And then they say, "We do not care exactly how you spend it and who you give it to. We just want to know that it is going to meet this group of needs." Then, it is our responsibility to make sure that is exactly how the grants are designed. The third category of funds that we have are called unrestricted money, where people are very generous and say, "We just want to be charitable and we know that you will do the right thing with our money to meet the various needs in the community." We get to then spend those dollars where the needs of the community present themselves at the time, which is where we have the greatest amount of flexibility.

So what that means for applicants is, in our case, that about two-thirds of the dollars that go out on grants are actually specifically at the request of the donors who give us their money. And those are the dollars that, in essence, we don't have so much control of, but they are large sums of charitable dollars. Seven million goes out to the L.A. Community. The balance of that, roughly $3 million, goes out in response to proposals that come into the foundation, where program officers assess them and say these meet the needs of the community, and here is where we have the money and we have juggled with all the different pots of money that we have, some that are very specifically designated and some that are very general, and see where we can get the money out. It is distributed as somewhat a mix of good proposals, as well as juggling the kinds of dollars that we have to contribute. And so for us, the most important thing about proposals that come to us is, is that there is an evident community need that we can respond to. And I guess that is where I will leave off.

Susan: We will come back to Judy later. This is just an introduction. We are starting the workshop by defining what the difference is between a private foundation, a community foundation, and a corporate foundation, then we are going to go back and say how the process works, what makes a good proposal, and all those kinds of questions. One of the things that I realize that I did not do, in terms of talking about private foundations, was talk about the fields of interest and the funding levels.

Judy has implicated that there are a very broad range of interests, by definition, in a community foundation. I did mention that Mr. Irvine established the fields of interest which we have kept. You will find that most private foundations will be either a single-field such as the arts or health care, or they will be multi-purpose interest foundation, like us. We fund in the areas of private higher education because Mr. Irvine was very interested in those institutions. In the fields of cultural arts, health care, youth programs, and a broad topic called community services, which are within the Irvine Foundation guidelines, we have been free to define what that means. That is our way of responding to the needs of the community, but we are much more clear. We have to be, in terms of determining as a private foundation what the fields of interest are, what the guidelines are, so that we can communicate to grant seekers whether they do or do not meet those requirements.

It might also be of interest to talk about asset level. We are one of the biggest foundations in California. The corpus, so called, of the foundation, which is how much money is in the bank depending on where the stock market is at any given time, is somewhat in excess of $500 million. We distribute approximately $23 million in the State of California every year, which is divided among the previously mentioned fields. We are among the twenty-five largest private foundations in the United

States. But among private foundations, you will find everything from relatively small grant-making that may not exceed several hundred thousand dollars in a year to grant-making that exceeds millions of dollars. So there is a large range. Community foundations have a distribution range as well.

Judy Spiegel: We are one of the largest community foundations. In contrast to our foundation that makes roughly $10 million in grants—between our donor designated funds and non-restricted funds—I worked with another community foundation in Texas that makes $100,000 in grants a year, and it is very new. So there is a very broad range of community foundation size as well.

Russell Sakaguchi: Corporate Foundations. Maybe it is apropos that you turn to me last, because probably amongst the giving dollars in the United States, and that is money that is given by the private sector to charity, corporations are, in fact, the smallest. Most people think that they are the largest. I think the latest figures are up to about $110- to $120 billion that is given annually to charities by private sector foundations. Of that, about 4.8 percent comes from corporations. That has held relatively steady over the past decade or so. Approximately five-and-a-half or six percent comes from the private foundations, and the other 89 percent plus comes from individuals. In fact, that is the huge untapped and unknown source of money.

One of the reasons for the small percentage given by corporations is that—Arco foundation—like most corporate foundations, and unlike Sue and Judy's foundations, has no corpus. We do not have a large sum of money sitting in the bank on earnings. Our money comes directly from company profits, pretaxed earnings. So, the company actually gets a deduction by giving its money to the ARCO Foundation, which is in fact a non-profit entity unto itself. Because of that, you see wide ranges and fluctuations in the amount of charitable dollars giving by corporations year-to-year. In 1987, our foundation for instance, gave away approximately $11 million in grant-making that year, which was our least profitable year. In contrast to 1984, when the ARCO Foundation was up to about $38 million in grant-making dollars. So you see, in a three-year period, we lost about 60 percent of our grant-making dollars.

The second thing that I think is dissimilar between private and community foundations, and corporations, is that we actually have two different giving programs. One of them is our employee program which comprises about 35 percent of our giving. We make on the average about 15,000 grants a year. About 800 of those are direct grants, which are proposals that come into the program officers and are reviewed, and so on. The others are employee match contributions. Fro example, a San Diego State University foundation will receive a $25 check from an alumnus or an interested party, if that person is employed by ARCO, they can fill out a matching contribution form and we will match it, as long as the organization meets some very minimal criteria. We do that because 89 percent of giving, is given by private individuals. We also do that to try and stimulate our employees to become involved, and to become generous givers.

We have found over the years—that despite the fluctuations in the size of our workforce and despite location changes in our workforce—that the employee match program has remained relatively stable and, in fact, over the past two-and-a-half years that it has seen about a 2.5 percent increase, despite the fact that we have lost 1,500 employees over that period of time. Similar to both Sue and Judy, the ARCO Foundation and most corporate foundations have a board of directors that make the final decisions on grants. And what they really do, is set the policy for the foundation.

Like ARCO, most corporate foundations' officers or directors are made up of senior officers. Presidents and CEOs of most companies are usually the chairman of the board of most corporate foundations. Additionally, ARCO is similar to most corporation foundations in that our grant-making is restricted to areas in which the company has operations, or in areas in which we have concentrations of employees. Right now that grant-making tends to focus on Southern California, and in Texas around the Dallas area. We are statewide in Alaska. And additionally, because we market in the five western states you will find that much of our grant-making is concentrated in areas in which the company has some marketing interests. This past year the grant-making total was about $19.5 million. This year we will look at about a budget of $18 million.

Susan: I am going to ask you two because we discussed it. Have you funded any American Indian programs through ARCO?

Russell: The foundation was incorporated in 1979. Last year, the company was 125-years old. And through that time, I did a quick check and we have done, I would not say a good number, but we have done some significant grant-making in the American Indian community. Most recently, in the field of education grants to Dixie College in St. George, Utah. Dixie College is a two-year community college that services the Four Corners area—Utah, Colorado, Arizona, and New Mexico. Dixie College developed a program where graduates of Dixie College could be accepted by seven or eight other universities within that school system. And Dixie says, "That they are having extreme difficulty with high school graduates, who are coming from small reservation-based high schools, who can make it into Dixie somehow, but who can never make that step to a four-year university such as Brigham Young or Utah State and make it through." They proposed that they become the link between those small reservation-based schools and the large suburban/urban universities within the Four Corners region.

It was a brand new program for us. We are not the only gas and oil company that is interested in that particular geographic area, yet Dixie College had been very unsuccessful in getting any money from the petroleum industry whatsoever. So we made a relatively significant $30,000 start-up grant to Dixie College to start bridging this type of program. I think that is significant.

The other program we funded about eight-weeks ago, The California Indian Manpower Consortium, sent a request to us for a revolving loan fund. My own background is in banking and finance, so anytime I hear about various revolving loans, my eyes light up. This one was in the Rancho Temecula area, which interestingly enough is an area where the company has marketing interests. The local Manpower Consortium had found an individual who has a long background in training horses. And, that individual has said, "That he would was assist Indian youth from the local reservations there—and please do not ask me what the tribes are because I do not know—in learning horse training skills. And, in fact, the money that we have put into this revolving loan fund would assist the youth in purchasing a horse, as long as s/he meet certain school attendance requirements, would be able to own the horse, raise it for one year, sell it, and finally, replenish the funds, so that this operation can continue. That is a small program that shows that there is a wide variety and diversity of things that can be funded with small amounts of money. That program was funded by $1,300, compared to the $30,000 Dixie College example. Small amounts of money are, in fact, obtainable through corporations.

The third difference that I should mention is that the largest corporate giver in the United States is IBM. In terms of cash, however, they are one of the smaller donors. Most of their donations are in products. So you see, there is a huge differential in corporations and private foundations, in that there is product donation that is additionally available. I just talked to the people at American Honda. They are forever giving away everything from lawn mowers to whatever, for local charities, this, that, and the other. That is another entire operation not connected with the foundation, but within the corporation.

One of the nice things about working in a corporation, and also one of the most difficult things, is that there is a very nice umbilical cord to all kinds of skilled people and other resources. At the same time, you are in a large bureaucracy. You do not have a staff of fifteen or so at the Irvine Foundation.

Judy: At the California Community Foundation we have made some grants to American Indian organizations in the past several years, over the last ten years or so. In the last three years since I have been at the Foundation, I have not even seen a proposal come in from any American Indian groups. So I guess one of the big messages that—I preach this a lot everywhere I go—is, as our foundation president is fond of saying, "If you don't ask, nobody's going to give it to you." And so for us, the gap is that we have not seen any proposals in the last few years.

Susan: I have indicated that because of our tax restrictions, we have been unable to participate in many American Indian programs. At the same time, like Judy, we have seen very few proposals. So my introduction to all this was when the proposal from The American Association on Indian Affairs (AAIA) crossed my desk I said to myself, "I do not know anything about Indian kids or what is happening to them and I need to find out." So I called the folks at the AAIA and I said, "The next time you are in California—I said have even no way of framing a recommendation or judging how I should research the proposal because I do not know anything—will you come and educate me? Will you just come and sit with me and tell me a little bit about what is going on and what I need to know." And, they were nice enough to do that. The message is that, not only do we not see very many proposals, but the educative process has to go both ways. I think funders need to learn a great deal more about the realities that you all deal with, as well as, you need to know how we operate, so that you feel a little bit more comfortable with the grant process. And that is where we are going now, I hope it meets your needs.

I am going to generally discuss how the process works in the generic sense. Somebody once told me, and I think they are absolutely right, that the more I thought about it, the difference between applying for public funds through the normal channels and the difference between applying for private funds, is very much like the difference between applying to a public university and a private university, like the University of Southern California (USC) and the University of California, Los Angeles (UCLA). At UCLA, the application is very straightforward, you fill it out, you give them what they ask for, you send it in, it is rated by numbers, and you either make it or you do not.

When you apply to a private university there is the application, the interview, the teacher recommendation form, and finally, the school recommendation form. What happens is that the private sector tends to judge things by a holistic picture, which they try and present of the applicant. And that is exactly what we do. So our process does not generally start with a Request for Proposal (RFP) or an announcement of a certain kind of funds that are made available for certain program types. What you have to do is to do the research. Say for instance, "Gee, I want to apply for a mental health program or for a child welfare program, then you have to find out who funds in that arena. The Foundation Directory, I am here to tell you, is available through most public libraries. Also, the Community Foundation has a foundation center, as do most major cities, where you can go and find out this information.

You then make an inquiry. You call up or write and say, "We have done some research and we believe that the James Irvine Foundation would be amenable to a proposal, what is the process?" So you have to call or write to ask us for our guidelines and our application procedures. Because we are all different, foundations are all going to be different, and it is going to drive you crazy if you really want to get into this. Because there is enormous variation in the specifics of how we do business, although the process is pretty much the same.

You call up or you send a letter of intent. And if you get a green light, or sometimes maybe even if you do not get a green light, if you start with a proposal, you send a proposal and supporting materials to one of the foundations. The first thing that is going to happen is that somebody, and it is probably not a program officer, it is probably a program assistant or an officer manager that initially reviews the proposal and takes a first cut on it. Is it eligible? Is the applicant organization eligible by the guidelines that are spelled out? Is the proposal eligible? Is the topic something that the foundation has announced as a priority area of interest? Is the organization eligible to apply? Is it an appropriate non-profit? For most of it is a qualified 501 C-3.

Then you will get funding if you are lucky. Some of us get so much volume—we try to behave better than this, but I know from my colleagues—that sometimes proposals are not acknowledged in a timely fashion. We try very hard to, at least, acknowledge the receipt of a proposal within one week. But that does not always happen.

But in any case, if your proposal makes that first cut, then it is assigned to somebody like one of the three of us, a program officer. In a small foundation, it may be assigned to a generalist, somebody who deals with whatever comes in, whether it is an arts proposal, something to do with kids, with health care, education, or whatever. In larger foundations, the proposal will get assigned to somebody who at least has some background in that particular area. I am the program officer at the Irvine Foundation that deals with all applications dealing with children and youth statewide. Judy deals virtually exclusively with health care proposals. Russell you have a big plate.

Russell: A big plate, recently including environmental programs, and all the public broadcasting, as well as the community programs which I always had.

Susan: You will get assigned to one of us. Then it is our job to decide what we need from you. Do we need further information? Do we need an interview? Do we want to make a site visit? Do we want references? Is this, as I referenced when the child welfare proposal came to me, how do I begin to find out how I am going to make a decision on this? Who is doing what in this field? Where does this fit? And we will try to put a lot of that stuff together, and then depending on the time and volume that we are dealing with, we usually go through several levels of decision-making.

For us, it is the program officer who first decides whether or s/he feels comfortable and ready to move forward with a recommendation. Then it is usually discussed with the rest of the foundation staff. If the foundation staff is comfortable with it, and there is usually a lot of negotiation that goes on at that point—then it will usually get signed-off by the president of the foundation, and then a recommendation will be written. This is another myth that I'd better dispel right now. When something goes to the board of a foundation, particularly a large foundation which deals with a huge volume, the board does not see your proposal. The board sees what the staff writes about your proposal. And if you think about it, in terms of the volume, most proposals tend to be pretty thick by the time you have written who you are, and what the project that you are trying to do is, what the justification for the project is, references, your financial statements, and all the other stuff that we ask for, it ends up being about that thick. The board could not possibly sort through that amount of material in quarterly meetings. So they tend to see one-to-two page summaries of the recommendation written by the program officer. And that is an important thing to remember when we get to talking about proposals, which we will discuss in a few minutes.

So, if a recommendation goes to the board and the board votes yes, terrific. You will receive a call and a letter saying, "Congratulations, we are very happy to tell you that the XYZ Foundation has awarded you a grant of "X" number of dollars." The amount of funding that you receive may not be what you asked for, because it is a process of a negotiation, or you may receive exactly what you asked for.

The bottom line of all this is, that it can take a tremendously long time. It can be a very frustrating process to grant-seekers, particularly people who are not familiar with how we do business. It can appear mysterious, mystifying, and arbitrary—having no rules. But all I can tell you is that we do our best to be responsive. It does take a very long time. The larger the foundation, the more territory that the foundation covers, the longer it usually takes to get a response. The rule of thumb at Irvine, is that if you are a new organization to us, the shortest amount of time that you could expect any kind of an answer from us is usually a couple of months. There are organizations that I work with for up to one year, before I feel comfortable in making a recommendation to our board. So that is another thing to remember.

There is a lot of ambiguity in this process. It is not a terribly straightforward process, because there are many different agendas going on. Another thing that you might also experience is that sometimes we seem terribly inaccessible. You do not know we are, we do not return phone calls, you do not hear from us for months. The other end of the extreme, is that if we really get involved with you, we tend to ask endless questions and continually ask you for further information, and so on.

What we are going to do now is generally discuss how the process works. So, if you will save your questions, we will get to them shortly. I am going to ask Judy to talk about what makes a good proposal. I think there are a lot of people who feel if they could only find the magic key as to what makes a good proposal. That is really not true. So we are going to talk about what we generically look for in a proposal. I'm going to ask Russell to talk about how we judge an applicant organization, because there are really two pieces of this. It is not only what you want to do with the money, but it is who the sponsoring organization is and how we judge whether it has the capacity or the legitimacy to do that service. But that is what we are going to talk about now, the proposal process, and what makes a good proposal.

Judy: Well, I think it is really important to get past this notion that there is some magic formula for the perfect proposal. I lead many grantsmanship workshops and everybody always says, "Show us a great proposal." And the reality is, I am not sure that there is such a thing as the perfect proposal or, you know, this is always the one that I would fund. There are lots of examples of frightening proposals. But it is hard to find the perfect proposal because getting the money is being able to communicate very clearly, and making sure that you send it to the right funder. What I am going to focus on is what should you should say to optimize your chances of getting money should you find the perfect funder.

The first thing I want to do is break the myth about a proposal being a "mythical monster," which is I think what people often times think it is. A proposal is nothing but a declaration of what you need, if you are the applicant and request for somebody to help you successfully get it.

A good proposal starts with a problem or a need. It says here is what is going on in my community, this is problem, we must do something about this. And the key as we go through this is, no single piece of a proposal stands by itself. They are all interconnected elements, it all moves in a very logical systematic way, and underneath everything it answers the question "Why?" Underlying everything that goes on paper, you answer the question "Why?" Why do you need this money and why you are coming to the foundation? Because you have this big problem in your area; you think this is the best solution for it; this is what you need from the foundation in order to accomplish your task; these are the resources that you have to do it and here is what you are asking. It is very basic.

Now let me walk you through and give you a little bit more detail. I think it is very important when you write a proposal to not assume anything. Do not assume that the person on the other end who is reading the proposal knows who you are, and knows exactly what you are talking about. They may not necessarily know the field. On the other hand, do not assume that they are stupid and they know nothing. You are likely to get something somewhere in between. So introduce yourself. Who you are. The first part of a proposal is the introduction. I am going to give you an example of an organization that I am loosely familiar with, "I am from the American Indian Free

Clinic in L.A. This is who we are and here is where we are located. We have been in this city for 25 years. We serve these people. We have this fantastic staff and board of directors, and here is what we have accomplished in our time as an organization." So you present yourself and your credibility to the funder, number one. Just as if you were walking into a room and meeting with somebody.

Second, you say, "In our existence as an organization, this is what we have learned are our community needs." It is important to be able to really document what your need is. Anecdotes are sometimes helpful and persuasive, statistics, local statistics. Make sure whatever you put in writing is relevant. It is a lot of work to write a proposal. So do not waste your time, write what you need to say. If it is a local program, then write what is happening locally. If you think there is a nationwide trend, and that is where you are headed for, then maybe relate it to where things are headed, but do not use nationwide statistics, for instance, if you have a local program.

I will give you an example of where it has really been disastrous. One of the areas I cover is AIDS services, and frequently what I have seen in L.A., is people using New York or national statistics to make a local argument. What happens in L.A. is very different from what is seen across the nation. So make sure what you offer is relevant. Talk about your own experience in the community, what have you seen, what can you document that has happened in your clinic in order to document the need for your project. Then talk about what you want to do, "Here is the problem and we think we have the best solution. Ultimately, our broad goal is to improve employability of our constituency. Our objectives for this particular proposal, what we want to accomplish in the next year, is that we want to see that 25 people get "X" skills, that their education level is "X" and that in the end of a year, 90 percent of these people are going to have jobs." What exactly is it that you want to accomplish within a specific time-frame and then exactly how you are going to do it, what are the steps that you are going to take to accomplish your goal.

I think one of the things that is important to say, going back to the magic and the perfect proposal, is that we all set out to do things that do not work the way they are going to be. So I think it is important to not talk yourself out of a proposal because you are afraid you might make a mistake. A very local example of this is, I live five miles from UCLA. I gave myself forty-five minutes to get here because I have been here for meetings a lot and I know that getting here takes me ten minutes, but once I am here it takes longer. I forgot how much longer it takes. So my objective was to get here by 10:15 A.M., which I was able to do, but the steps that I had to take to accomplish my goal changed along the way, in terms of parking and the route that I took.

It is important to remember that the most important piece of your proposal is what it is that you want to accomplish. Also, know that while you want to present a well thought-out plan and a proposal, you have to know—and it is okay to tell a friend if you talk to them later—well, this is want we think is going to work and if it does not we may try "X" steps. Okay, here is what we want to do and here is how we are going to accomplish it.

Very important is the evaluation. How will we know we were successful? It is very important to funders at the year end, or even during the period that you have a grant, to know that you can give them some information about how you were successful. They need to be able to go back to the boards of directors and say, "God, look we made this wonderful grant." Or, "It did not work, but that's okay, we still think it was a good investment because here is what we learned." Not only is it good for us to be able as a funder to say, "Okay here is our track record or here is how this grant went." This enables us to take the information we learned about the success of a program and apply it to other proposals that we get from other applicant agencies.

More importantly, is that you need to know how you measure. You need to know whether or not your program was successful because that, in essence, will help you with future programs, and to keep things going, as well as your ability to get funding the next time. Because you could say, "Yes, look. It worked. And we know it worked because here is how we looked at this program." Tied to all of that are dollars. Make sure that you have a well thought-out budget. You will probably find that funders have very different needs in terms of the format in which you present a budget. But the budget should essentially be a financial reflection of the proposal. It should answer the question "Why?"

So each section of the proposal says why are your group are the ones to do this project. Why do you need to do this? Why the approach that you are going to take is the best one? Why are these staff people needed and why is each dollar being asked for? Not every pencil and paper clip, but transportation costs, educational materials, printing, rental space. Whatever it is you put in the budget should reflect the other aspects that you put in the rest of the proposal.

You will also find that most funders ask how you are going to keep this project going after this year or two years after the foundation awards you the money? I have to say—this is another important aspect about writing proposals—there's not much difference between the people who read the proposals and the people who write the proposals. For years, I worked at a service agency before I worked for a funder. I know how awful it is to ask for money. It probably affects the way I make grants. I also know how awful it is to try and figure two years in advance, the next time I am going to ask for funding, how in fact, am I going to get that funding. Sitting on the other side of the coin, I realize how important it is. I do not want to give $100,000 to a program, for instance, that is going to die at the end of a year. If it is a good program, I want to know that the person who is applying for the money is committed to the project, and is going to try and find other ways to keep it going. So, being able to say here is the strategy, "We are going to go to these kinds of funders or we know that there is this pot of money from the government that is coming up that is dedicated to this; or if we pilot it and it is successful, we know that there are these five funders who would be eager to pick it up."

It is important to think about how you are going to sustain and continue a program, if you think it is important, and to communicate that. I also have to say that there is no magic number of pages. Say what you have to say and stop. Proposals are not judged by weight. There is nothing wrong with a short proposal that is comprehensive and says it all. That's it.

Susan: Okay, thank you. Russell.

Russell: There are several things, that both you and Judy have spoken of, that I would like to comment on. Then I want to say a little bit about the organizational section. The ARCO Foundation, no matter how big or small the proposal is, gets condensed to one paragraph. The board will not read anything beyond that. It is one paragraph, and generally, key things include what is it in fact that you intend to do. We make some larger grants that require a full blown write-up. And that is usually a one page write up. But beyond that, what Judy and Sue has said is true, it has to get condensed down to what is essential.

The second item, and I brought this with me to remind me to talk about it. There is a publication called *The National Register Publishing Company*. I can't say whether it is a good or bad publication, but the only reason I brought it with me is that they sent ARCO Foundation a form and asked us to respond. On one side they said, "Check all of the applicable types of grants that we make." This is the universe of grants that they collect information on. There are thirty of them. I will read them because I don't know half of what they are, "Assistantship Awards/Prizes; Block Grants; Capital Grants; Challenge Matching Grants; Conferences/Seminars; Demonstration Grants; Development Grants; Endowments; Exchange Programs; Fellowships; Formula Grants; General Operating Grants; Grants in AIDS; Internships; Loan Forgiveness Programs; Matching Gifts; Product Donations; Professorships; Project Program Grants; Research Grants; Residencies; Scholarships; Seed Money Grants; Technical Assistance; Training Grants; Travel Grants; Visiting Scholars; Work Study Programs; and Other."

I am glad they did not have more. My voice is giving out. That is the kind of the universe in which some of the grant categories get put it. Beyond that, let me talk a little bit about what I look for. And I will have to discuss it relatively, because I do not know what a lot of my colleagues do. But I think most of us look at things without a magic formula, just something with a little common sense about it. What Judy said is really interesting because I, like her, worked for a non-profit organization, and in fact raised money for it. I think the first piece I look at goes right back to the mission of the organization. Why is this organization in existence? What is it intending to do and who is going to be served? Additionally, I think if you look beyond that, it is to the goals of the organizations and how those goals are translated into programs or services that are offered.

The third thing I review is, does the organization have a long-range plan. Overall, what is it going to do over a certain time period. In corporations, and I guess maybe in business school, you get drummed into three- year and five-year revised strategic plans. But I think that is very important, because corporations look often, almost constantly, at their own internal management. I expect non-profit organizations do that very same thing too.

The next thing I look at is the governmental aspect of an organization, the board, who is on it? I almost always look at what their outside affiliations are. That is only because, I want to see how that board and that expertise on that board fills in gaps, fills in lack of information or expertise on the staff level. And how that board may enhance a project or proposal. What role does the board play in the organization, and is there even a feeling that the board has a full understanding of the program? Then I look at what I call the stability/capacity of the organization. And that is, the track record and professional standing of the organization. That includes the staff, their tenure, and their resumes, etcetera.

Then the final piece, which is actually the piece I look at first, is the financials. The first thing I do is just take a look at the fund balance. If I am lucky enough to get a financial statement that is in fact audited, the first thing I look at on that is the auditors' statement and who the auditors are and if they have a qualified or unqualified statement. That is the first thing I look at.

Once I get beyond that, I will probably just take a look at the liquidity of the organization. Does it have the ability to pay its bills over the next month or six months? I do just some quick checks, in terms of the ratios and so on. Now, beyond that I will then look into the project budget. And I do not know if I want to go into various budgeting, but I will tell you that I have seen a lot of different kinds of budgets that come into ARCO. Generally, it breaks down into two different categories, those that are done by programs in which you have your administration spread and you have program A, B, and C, and so on, and you have income and expenses and you break it up that way. Or, in fact, a project budget in which you take any one of those income lines and work through it.

The final piece I want to offer to you is getting money from an organization, be it a private foundation, community foundation, or a corporation, in fact it can be much more an art than a science. There is no checklist to it. There is no easy way to do it. I think most directors and those who are in charge of raising money for programs like to think they could start off on January 1, 1992, and work until around April or so, gather all the money, never have to worry about it again, and then run the programs. Unfortunately, fund-raising is a never-ending thing. It is not a spigot you turn-on and -off. It is almost a twenty-four hour a day grind. Those of you who attempt it and are successful at it, are probably amongst a rare group of individuals. And I certainly wish you all luck.

Susan: Thank you, Russell. I have a sense that we talked longer than we had intended. We want to open this up and receive your questions. So let's just end it right here.

Woman: Do you offer technical assistance other than like today? Will we be able to call your office and ask questions if we have questions later on?

Susan: Yes and no. I think part of this process is almost like a human relations process. If you get past all the screens and get to know a program officer, I think a lot of us, because we are in the service sector, like to think we offer more than money, in terms of reading drafts of proposals. Time limits, however, really preclude our doing a whole lot of that. In a formal sense, I think you will find that many foundations, and ours increasingly does, offers formal technical assistance. In other words, there have been a number of occasions that I can think of in the past year, when we have gotten proposals from organizations that show real promise but our judgement is that the organization is not yet ready to really get the big grant. What they really need is some planning money, some time, some developmental work. And we have set aside a certain amount of our budget to do that kind of technical assistance and planning.

Russell: Let me answer that. I will answer some very specific questions about a request or a proposal. But if you have come in with a blank sheet and are on what I call a "fishing expedition," those are generally difficult calls to give much information to. I usually do not spend much time with them. If there is a specific question, we try and respond. The difference is that we are ARCO, and we are a retailer, and as a result, we are on all kinds of corners—we figure most anybody could be a customer. So we have to respond at least in that vein.

Susan: If what you are concerned about is getting your proposal in, then a better solution than calling and asking a generic question, would be to do a little bit of homework first, and find some places that you are considering sending an application or proposal, and then contact them directly to establish a initial relationship with them. Because beyond the things we are talking about here, or getting very specific skills or asking specific questions about proposals, you really need to go to the source, your target source.

Russell: I would also say, that the California Community Foundation has a Funding Information Center that has a great library, and is a great place to start. Additionally, there is an organization called The National Society of Fund-raising Executives. They have chapters in every state, and in fact, has a local L.A. Chapter. That is a trade organization consisting of people who are professional fund raisers. They welcome members and guests to their various meetings. You can just go in and sign-up for one of their luncheons and talk to them. That is a great place.

Susan: You had a question?

Man: I have two quick inter-related questions for all of you using Judy's examples. If I can paraphrase your example, in setting up a program where you wanted to establish an employment program to get people back to work. In that proposal, talking about the need for the proposal, would you generally react positively or negatively to a more or less academic approach. In other words, if in the proposal you say Smith and Jones have demonstrated such and such which appears in the *Journal of Management of Employment Programs*, etcetera, documented and so on, would you take a positive look at that? Especially if it appeared as though these people have really done their research, they know what is going on in the field? Or should the proposals be academic? Now, related to that would be the comments that you made about evaluation. If I were to do this proposal and it said in the evaluation, well, we will set up a scheme of goal attainment scaling, a recognized methodology for evaluating programs where people are supposed to make progress toward achieving the objective of the program proposal, would you say this is some ivory tower academic—which in my case is, true—or would you say these folks, this agency has it together? They are clearly going to apply recognized approaches or would you say that this sounds a little too academic?

Judy: Oh, I hate yes and no questions. The answer to all of these questions is yes and no. If it were coming to me—and I think this is really important. I mean, one of the things, probably the hallmark of what you will hear from us today, is do your homework, get to know who you are applying to. Because one side of the question, is what is appropriate for us, if I am the applicant agency. And the other is, how do I communicate that. And how you communicate it may depend on who you are applying to. If you were applying, for instance, to the Community Foundation for research dollars, then being very academic with some community benefit would be okay.

If you said we have this model that is based on "X" and it is to address this community need and we really want to see that perhaps these same principles or skills worked with this community, but it still has a really clear sense of who the community is, then, a more grounded approach would be okay. I would not expect, however, a small community agency to come in with a very elaborate evaluation plan that is necessarily based on academic principles.

Something to bear in mind is evaluation—and I've made this note to myself because I did not spend much time talking about it—can mean a number of things. It can be very quantitative in nature saying, "We said we were going to reach these people and we really did." It can be qualitative in nature saying, "Here is how well we did and here is how we can show you." It can be very—I do not want to say academic—it can be a very thorough research design evaluation that says much more than that, a case control summary. It may include what design and what approach you take, and how you communicate that depends, in part, what the goals of the project are and who you are asking money from. I do not think there is a real clear answer.

Man: Well, I was using your example.

Judy: If I were getting something from the American Indian Free Clinic that was very academic in nature, I might look askance at it. I would not expect that. It would be very important to know the community picture, and if there are academic principles which say, "Look here are these approaches that have been written about in the literature and we can apply them." Then great. But there is no correct answer to that, I guess.

Susan: Judy has just illustrated the point that I tried to make earlier, which is that this is not a monolithic private sector to which you are applying. There are foundations, I can think of one right off the top of my head in Los Angeles, The Haynes Foundation, which restricts itself to social science research.

Man: I do not want to dominate this, but the reason I asked this question, is that I teach the students who write the types of grants that we are talking about, and I would expect those students to be pretty knowledgeable. These are American Indian students who are applying for grants on behalf of the American Indian Clinic. And, I want to them to be as knowledgeable as possible about how they are going to document, how they are going to evaluate the program.

In fact, I have served as a consultant to agencies that my students have become involved in, etcetera. But it does become confusing at times, as to whether it appears that we are being too academic, what the expectations are of documenting that those services are indeed delivered the way that we said we would and so on. I mean, it is an area where there is room for growth and development in our society. As dollars get scarce, grants are becoming a wave of the future. I would think that as funding agencies, you would want to say, "Boy, we spent that money and, indeed, they had a good plan to document that everything fell in place the way they wanted it to happen."

Russell: Over the years ARCO has funded a good number of research projects. Almost all of them are non-academically based. For instance, in the job training area, Manpower Demonstration Research Corporation of New York City is actually doing a number of controlled experiments all across the United States. And all of that, very specifically tied in to changing public policy. If there is anything that I feel that an individual or university often times falls down on, is the ability to move their work on towards to public policy.

Susan: I would second that. I think that funders are increasingly becoming aware that is the bottom line. Whatever projects we fund, whatever learning is taking place, from our point of view, has to be based enough in the field to move an agenda.

Woman: I have a question that is a related to this, just based on some of my own gut feelings and experiences. I have written mostly competitive grants. And the grants that have been particularly successfully rated, have in many ways been much like writing a thesis. In the private sector, my feeling is that it has played a different process, and I feel a little intimated about it. I didn't want anything to do with anyone who was in charge of that money. And so I felt that the skills maybe required are different and they are skills I do not have.

Susan: I think what we have tried to do here is say that the skills are not necessarily different, but just the understanding of the arena is different. The rating scales that the federal grants use, for example, are pretty cut and dry. Therefore, you write to a formula. And one of the things that we have tried to say here is that there is no formula to write to. And what you need to do, perhaps, is get a sense of the individual foundation that you are applying to. What is its institutional identity? And we try increasingly, in our annual reports to communicate that identity.

Woman: So we should get an annual report from the agency?

Susan: Absolutely get annual reports. Maybe Judy ought to talk about that, because of the Funding Information Center at the Community Foundation. How do you find out who we are?

Judy: Yeah, I think one of the big differences between going for government dollars, for instance, and private dollars is that usually with government funding, you are responding to something where they say here is why we are putting this money out there, here is what we have available, and here is what we are specifically looking for. So you are responding to what the government has asked for, opposed to getting money in response to what you are asking for. In fact, the reason we brought you these materials is, for instance, not so much that you need to know our foundation backwards and forwards, but how to use them.

One of the things that we like to say all the time with proposals is, when you do your homework do not go looking for funders who look interesting, and then figure out what kind of program you can make-up to get funded, because those inevitably are not what funders want to fund. Because it usually appears as if you are just trying to get our money and that you are not very committed to the project, and by next year you are not going to do this because that is not where the buck is going to be. But you really want to start with your own idea. Look at what it is that you want to do, and then find the funder who best matches that.

I am not going to walk through this book. The reason I brought this handbook for everybody—and there is one left I think—is that this actually walks you through some ideas about what funders look for, where some of the places are located that you can do your homework at, and also a reminder about what goes into a proposal. The Funding Information Center is a wonderful library of resources, including directories of corporations and foundations who have money, with any variety of ways to approach the foundation. You can look for funders who are interested in a particular field of interest, health care, a particular disease. You can look for funders who are interested in an approach, not that I am interested in education, but I am interested in who will fund media activities, and media development. You can look for funders by geographic area.

So it is very important when you are doing research and using these kinds of tools to look at where the funders are, and what their limitations are. I am a big believer in cutting unnecessary steps out first. Do not waste your time going to people who cannot help you. What are the limitations of funding sources, where are they located, who are they interested in, what are they interested in? Many of these directories will give you a year or two of synopsis of the funders, and what they have funded in the past year.

Get on funders' mailing lists. Get their annual reports. Because what you will get from these—and I would say read a few annual reports of a foundation before you apply if you can—is a sense of what they are interested in. The annual report will usually highlight a little bit about the foundation, its principles, the foundation's mission and values. There will be a list of what they funded in the past year. In our case, one of the things that is interesting is that we have donor designated funds. It lists them by name and what they fund. And while you cannot apply directly to them, you might be able to make donors aware that you exist. The annual report also gives you financial information about the funders, so that you know the range of funds or dollars that they have available to give.

Susan: I think it does something else if you contact us. It expands our repertoire.

Judy: Right.

Susan: Most of us do not have the time, even if we were interested, to go and figure out who is doing what in a particular arena, or where those particularly smaller non-profits or grass roots organizations are, which we really would like to reach, but it feels like there is this unbridgeable gulf sometimes. And I think what we need to do is to find ways to bring them together. And if you come to us, if you ask us for information, if you get on our mailing lists, those kinds of things, then it expands our inventory, if you will, of who is out there.

Judy: As well as putting us on mailing lists. I get newsletters.

Susan: In very real terms, the reason why I am here at this particular conference today is because of a proposal that reached me about three years ago. A proposal which I knew absolutely nothing about, and decided that I'd better get myself informed. The applicant organization was good enough to be patient with me, and spent time educating me about the area. As a result, it opened a whole lot of doors for me. Unfortunately, our particular foundation is not a foundation that can be tremendously active in this arena because of the realities of where most of the funding for American Indian programs comes from. We are the only foundation that I know of that has that particular restriction. So part of the plea, is if you want to tap into private sector funding, it has got to be a two-way street. You are going to have to educate us about what goes on, and we are going to have take the time to learn.

Man: Question and a comment. In Ohio, the Attorney General's office distributes a book every year listing all of the foundations in Ohio, including information about how much money that have to offer, what they fund, what they do not fund, and that type of thing. Other states may have that, too.

Susan: Right.

Man: What about applying to more than one foundation on a particular project, but advising each foundations that you are asking also other foundations for money?

Susan: In this sense, it can be almost be a name dropping kind of thing. Once you get your foot in the door you will be amazed. "Oh, you got a grant from ARCO, you got a grant from Irvine," we tend to know each other. Increasingly, as our funds drop and as public dollars drop, we are looking more and more for collaborative kinds of funding. Particularly, if it is a new area to us. It is real hard sometimes to get a board to back us, to stick our toe in the water, for something we have never funded before. But we have partners, if we know—I mean, to a certain extent it is a game. Do not try to play us off against each other. Sort of good cop, bad cop. But at the same time, it is helpful to know.

Man: Do you advise the person that you are applying to, that you are also applying to other foundations?

Susan: The other side of that is do not just blank it. Just do not take a list of Los Angeles foundations and say we have applied to this foundation and that foundation, etcetera.

Man: We have a cultural activity project that we have been doing and we applied to two foundations in Cleveland, and they split the money right down the middle on the project.

Susan: Yeah, that is great.

Man: The other thing, there is a foundation center in Cleveland that brings together a group of funders. There a number of those around the country.

Judy: In fact, the Funding Information Center that is what it is. I think in the back of this there is a list—there was a list in one of these renditions—of where you can access them.

Susan: Anything else?

Man: I was wondering, would it be better if we just sent a letter of intent to find out if you were interested in what we had in mind?

Susan: Some foundations really like a letter of intent better than a proposal. And that is something that you can inquire about. If you have located a foundation that you want to go to, ask not only for their annual report, but their application procedures, some will come right out and say we prefer a letter of intent. Some will not.

Judy: Foundations like ours, we do not even respond, unfortunately, to letters of intent because of the number of proposals that come in. We only respond to full proposals.

Susan: Again, it is a question of finding out.

Man: Well, the reason why I ask is because like she said, they do not even respond to a letter of intent. But the thing is, if you prepare a full proposal and then find out that is not what you are interested in, then you have wasted a lot of time.

Judy: I would encourage people to call. Make a call before you submit a proposal. If somebody called me I would always take a call like that. I may not be able to say, "Oh, absolutely that is going to get through." But I would tell someone do not bother, because I do not think that we could get a proposal like that funded right now.

Susan: Most of us have program assistants who are there to screen calls. You will find, particularly if you have been with a foundation for awhile, they can be as helpful as a program officer. Sometimes though, you may want to ask to talk directly to a program officer if you feel that you are not getting the kind of answer that you need.

Man: Well, that is what we have in federal agencies. We have an officer that we can contact.

Susan: Anything else? Yes.

Woman: Not so much a question but an observation. I am in a peculiar position where I do give money. Last year, I privately gave $25,000 to writers. I got a group of writers together, and I told them to go out there and spend time writing, which they did. The first set I had numbered five. I am now up to twelve. They perform, they write, they do all kinds of things in the community. What we started off with was a single idea, and we then decided that we would not go the government route, but that we would rather go the community route, Native community. We would use the old system of staying within the community, understanding what we wanted, and then going from there. It took a few dollars and a lot of common sense. I find that after a-year-and-a-half of working like this, where everybody is a representative of the writing group, that we have people who are now operating at a national level as, let's say, as performers. I at least have two that are operating at a national level because I was able to give them rent money for two months, which they paid me back. And in another case, I gave books, simple money for books. Then I bought $2,000 worth of books, which I said, "This is a library. You can come in here and if you want to find out if something is available." I mean, that is just at a one-person level.

Susan: Good! Thank you for coming.

WORKSHOP 2

Critical Incidents: Taking Care of Yourself

(Thursday, January 16, 1992)

Facilitator: Terry Tafoya, *Psychologist*, San Francisco

Terry Tafoya: One of the things that has always been frustrating to me, as an Indian who goes to a lot of these kind of gatherings, is that there's this thing that if you're on Indian time, a lot of people actually show up for the time it's scheduled for, and other people come late. I realize I need to show respect for those people who come at a later time, but then it seems like I'm not showing respect for the people who come exactly on time. So the way I've resolved it for myself is, I start by telling an Indian legend that does not necessarily have a lot to do with what I'm doing later, but you get a bonus. So, you get something and they don't, but at the same time they haven't missed something from the overall presentation. That's the way I've tried to balance things out in terms of respecting everything. I'm based in San Francisco so I understand political correctness as a way of life.

I want to start by telling you a story. This has nothing to do with my actually doing the workshop. If it does, it's just because these things overlap.

Before I start, do you remember atattlia? Ever hear of Bookwis? Tsonaqua? Ever hear of Big Foot, Sasquatch? Well, those other people are relatives of Sasquatch, and our old people tell us, "Sasquatch, he's okay. You don't bother him, he won't bother you." But just like you might have some relatives you don't like, Big Foot's got some relatives who are bad news.

One of the worst of these is someone called Dash Kayah. Now, Dash Kayah is all covered with long, black, greasy hair which kind of smells because she doesn't take a bath very often. And she's really ugly. She looks like she climbed up on top of an ugly tree, fell down and hit every branch with her face. And she has big yellow eyes like an owl. When they make a mask of her, they use bear fur for her eyebrows. They stick out. But the way you'll be able to recognize her, whenever you see her in masks or on totem poles or especially in a person, is that she always holds her lips out in a little snout formation, like a tube. And the old people will tell you, if you're a child and you don't listen to your elders, Dash Kayah will come into your bedroom at night and she'll suck your brain out of your ear.

But the real reason why she puts her lips like this is because she'll whistle. (*Whistles*) and she only comes out at night. She looks for young boys and girls by themselves. If she finds one, she'll hold out her hand and it's got food in it. Maybe dried deer meat, maybe berries. If you reach for that food, she'll take her other hand and slap you across your eyes so then, your eyes are glued shut and you can't open them to see, to run away. Then she'll jerk you up and throw you inside the basket she carries on her back. Her basket is so large it'll hold ten kids. And that's her favorite meal, ten kids, because she's a cannibal. She eats human flesh.

Now that you know this background, I'm ready to tell you the story. This is an issue in terms of when we start incorporating American Indian traditions, legends, stories with the work we do. Sometimes, it takes just as much preparation time to get an audience ready to hear them. Particularly if you're going to be working with urban kids and kids that have grown up in foster care families, because a lot of the legends will make reference to how a deer moves, for example. And for a lot of city kids, whether they're growing up with their biological family or not, they may have never seen the way that a deer actually moves in the wild. So this is a way of getting them ready to hear things.

With that in mind, Ana kush iwasha. Ana kush iwasha means "this is the way it was." In the Sahaptin language, it's how we traditionally start a legend. A long time ago, there was a young boy. And the boy woke up. It was early in the morning. And the first thing you're taught to do in the Pacific Northwest when you wake up is to take a bath. The boy went down by the river to bathe. It was early in the morning and the sun was just starting to come up, and the sun felt really nice and warm on the side of the boy's face. And he sang a song to thank the sun. When he had finished, he went out fishing to get food for his family. But he went out so far, he realized that he could not get home again before the sun would go down, so he decided he'd camp out right where he was.

It was late at night and the moon was full. White people say that there's a man in the moon, but our old Indian people up in the Northwest tell us it's really a frog. So this frog was looking down at the little boy when clouds came up and covered up the moon, so everything was dark. And the boy woke up and he heard something. Footsteps getting closer and closer. And then he heard that strange whistling sound. And the clouds blew away from the moon, and he could see the monster woman Dash Kayah standing there in the darkness.

She called out to him and she said, "Don't be afraid. All those stories you've heard about me, they're really stories made up from scared little children. I'm really a very nice person. In fact, I'm such a nice person that I have some plump, juicy berries for you." And she held out her big, hairy hand and it was just heaped high with berries. As the boy reached to take some, he saw that instead of fingernails on the end of her fingers, she had long, sharp claws like an owl.

When the boy reached to take some of those berries, she took her other hand out from behind her back and slapped him across the eyes so that his eyes were glued shut from the tree's sap. She jerked the kid up and threw him inside the basket on her back, and she ran through the woods whistling.

Finally, she came to a clearing in the woods and she dumped the boy out onto the ground. In the center of this clearing she had built a big bonfire, and all around the fire were other children that she had kidnapped, that she had stolen, because she was going to barbecue them. She was going to roast them the way we barbecue salmon outdoors in the Northwest. And she was so proud of herself. She was going to have such a fine meal of these children, that she started singing and dancing around the fire. Dash Kayah sang. *(He sings)*

Now, the boy was really afraid because he knew he was going to be eaten. He wished the whole day would start all over again. He remembered how it had started with the sun coming up and feeling really nice and warm on the side of his face. And the heat of the fire reminded the boy of the warmth of the sun. So he leaned a little bit closer, and as he did, the sticky stuff on his eyes started melting, just like butter will melt when it gets near something hot. And pretty soon, he could see a little bit out of one eye and he could see Dash Kayah still dancing around the fire.

And this gave him an idea. He whispered this idea, this plan, to the little girl sitting next to him. And she whispered it to the boy sitting next to her. And so it was that this plan went all around the circle of the children, until finally as the boy watched, Dash Kayah finished her dancing.

Now she was so tired she could hardly stand up. And that's when the boy shouted, "Now!" The children jumped up and they pushed her into the fire, and she started to burn. But she didn't burn the way ordinary things burn. She burned like sparklers, like fireworks on the Fourth of July. And as the children watched these sparks fly up into the night, they turned into mosquitoes. And that's why mosquitoes bite because they still live off the blood of young kids even today.

Now, that was Dash Kayah. But Dash Kayah had four sisters and those four sisters are still around. And that's why today, we teach our kids on the reservation to never whistle at night because you might call these kind of spirit people to you. Ana cush nai. That means the story's over.

That's a story I often start with in terms of working with different kinds of groups, including children. One of the things that old people tell us back home is that you always remember your legends because there's something from the past and something for the present and something for the future in them. We may not have a lot of Dash Kayahs out there right now, but we still have monsters that steal our children and our loved ones. Only nowadays, we call those things substance abuse or addiction, or we call those things AIDS, or any other kind of illness that our people suffer from. So this is an interesting story in a lot of ways, particularly for those of you interested in coping skills of your own.

One of the things about it, is that the little boy is being threatened by the fire in terms of being roasted. If he were to pull away, in terms of trying to avoid it, then he would have ended up being roasted. But what he does is actually get closer to the danger, and the very act of approaching the danger is what actually saves him.

There is a writer friend of mine, named Madeline L'Engle, who talked about a time when she was a little girl at her grandparents' home. She ran without thinking through a pane of glass, a sliding glass door. She ran right through it and it shattered, but she wasn't hurt. And as an adult, she was thinking, if I were doing that and I were afraid-I ran through because I didn't realize it—but if I were afraid and hesitated, then I would have been really cut badly. As a therapist, a lot of times when we're working with families or with children, they'll approach the pain-pane of glass, pain of their life-and stop. So it's almost like they go to the jagged edge of the glass and then, they go back and forth and just saw themselves into ribbons instead of being able to go through the pane and then end up on the other side. That's part of what this legend is teaching.

There's another aspect in the sense of it's telling you that there are terrible things in life, some very frightening things like Dash Kayah, but they don't disappear. If you behave in an appropriate way, if you behave in a brave way, then those terrible, monstrous things transform. Evil doesn't disappear out of life, but it becomes something that you can handle on a daily basis. There are a lot of ways in which the stories, like this one, are used by myself. For example, as a clinical psychologist, I work with teenagers who have been suicidal. A number of the patients that I've treated, or families that I've treated, have been kids who have been adopted out into non-Indian households and grow up there. They do fairly well until they hit puberty. Then after puberty, they go through a real identity crisis where they will often run away or become suicidal.

I realize that some additional people have joined this room , so I'm actually ready to start. Before I start officially, let me mention to you that my name is Terry Tafoya. I'm a clinical psychologist and a family therapist on an extended leave of absence from the University of Washington School of Medicine where I'm on the faculty specializing in family systemic therapy. I left the University of Washington about three years ago to help found a National Native American AIDS Prevention Center, based out of the San Francisco Bay Area. I work as a consultant for the American Psychological Association (APA) and the Office of Substance Abuse Prevention. When Troy called and said he wanted me to do a workshop, he said, "I want you to do a workshop on taking care of the caretakers." It's an interesting mutation of the name. But that was my understanding of what he wanted me to do. One of the things that I've been doing over the last year is a series of workshops specifically aimed at the people who work in the AIDS field. A lot of nurses, physicians, psychologists, therapists, and social workers are in a position where they're typically working with very ill people who have HIV. They may have a large number of people that they lose, that pass away during their treatment.

As a result, they are now facing a history of working where maybe they've lost two-hundred-fifty patients over the last year, all who have died of AIDS. It becomes more and more stressful for them in terms of dealing with these issues of loss . So I've been doing a series of workshops with a colleague of mine. We talk about multiple loss and multiple grief. When Troy called me about doing this workshop, a lot of that seems to tie into what some of you go through. In one sense, it may not be in the same arena of such life and death issues all the time, but with the experiences of some of the kids you work with, there's often grief and bereavement, a sense of loss, a feeling of "I don't know who my family is," "I don't know my place in the family," "I don't know my connection with my tribal community," and "I have formed close attachments with my foster parents that I might lose if I'm placed somewhere else."

The American culture in general doesn't do well with issues surrounding grief, loss and bereavement. One of our human realities is that if you were to cut yourself and it has time to heal appropriately, it will often form scar tissue. This scar tissue is actually stronger than the original tissue was. For a lot of us who are working on a continual basis, those of you who are social workers or therapists or nurses or other people working with kids, you may not have a chance to heal. In other words, there is such a constant need for you to do certain kinds of things, there's not a chance for that scar to form. So it's always being torn open and re-opened and it doesn't have a chance to make you stronger.

There's been a tradition for many tribes, with things like the sun dance, where pain is a way of purifying yourself and making you stronger in different ways. But in all communities, there would be a tradition of recovery time, a recuperation time. If you're constantly on the front line, you don't really have a chance to recuperate or to recover. These are some of the things I want to talk about today.

Let me just ask you. In the amount of time we have together, my expectation is that you came here today thinking you would leave with something specific. I could be wrong with that, but maybe some of you did. I know why I'm here, and I know the agenda that I have in terms of certain things I'd like to share while we're together. I would hate to think that at the end of the day, you left thinking he never got around to talk about X, and I really wanted to find out about X because it's what I think will help me with my work. Or, he spent time on T and did a nice job on Q, and touched a little bit on R, but never once did he ever talk about X.

I don't know what your X is unless you share it with me. If you ask it out loud, I may by no means have the solution to all these things, but here we have a whole room full of experts who might be able to share some of the things that have helped them. If none of us can come up with a suggestion or a solution, we can all admire your problem. So with that in mind, are there any specific things you would like me to address while we're together that will lead into the material that I will be presenting?

Woman: I don't know how to word this, but when you are working in this particular field, you become real cynical about situations and you kind of deal with that among your staff. Instead of looking at things objectively, you become angry about it and feel like you're useless.

Terry Tafoya: I think you articulated that very well. One of the things I used, when I was training people, to direct the psychological counseling program at our university, and one of the things I would tell all my students is, that if you want to see change, plant a garden. A lot of us who work with the people, and in the health field, know that we'd like some change to take place. We have expectations, particularly if you've been professionally trained in terms of being a counselor or social worker, because you have basically been handed a script in the sense that you know what you're supposed to say and you know what the patients or clients are supposed to say. But the reality is that the people you work with haven't read the script and they do a lot of ad-libbing and they don't really know what their role is, so they constantly disappoint you.

If you plant a garden, then it's a wonderful thing where if you give it water, it grows. If you don't give it water, it shrivels up. If you give it fertilizer, it does interesting things. Families aren't like that. They may be like that over the long stretch of time, but as therapists or people helpers, we are only around them for short periods of time. Particularly where I was working, at our hospital, where we use what was called brief intervention therapy. This is where we see people on the average of about eight to ten times. So in that sense, one of the nice things about being in the same city, where I was teaching and doing therapy for over twelve years, is that I would occasionally run into former patients who would be at the supermarket or at the movie theater or something. They would come up to me and talk to me about the change that had come over their life. Not necessarily while we were involved directly in therapy, but maybe two years later or four years later. They felt that they could trace back a lot of those changes to the work we were doing, but it's not something that I could observe when I was only with them for six months. So be aware that sometimes one of the frustrations we get is having an expectation that things should happen in a certain way when the families we're working with don't have those same expectations.

By the way, it works the other way, too. In terms of frustration, where when I teach therapy, to me, there are two basic forms of therapy. One is life enhancement and enlightenment, and the other one is crisis management. If you are a person who is in a crisis, and you come in and I'm a therapist who says, "Let's work with you in terms of achieving your full potential," that's not what you want to hear. You want to know how to get the bills paid, you want to know how to get your kid out of jail. If you are coming to me and my focus is on crisis management, and you really want to become a better person in terms of your enlightenment and potential, then it's not a good match-up in terms of what we're trying to offer one another. I think this sometimes happens and a lot of our clients don't really know what our role is as a social worker or as a therapist or as a nurse or administrator, and the client may have unrealistic expectations of what we can offer and what we can do.

On a whole other level, this is something I'd like to do a session on, I was working in Alaska with a lot of Native parents there on bilingual education. Actually, I should keep this confidential since this will be on public radio. In a village north of the

Arctic Circle, we were having a meeting and talking about the frustrations that people have in terms of working with the school district there. I suddenly realized that in listening to the parents and Native teachers that they really thought the purpose of school was to serve the children. That's completely wrong. My masters is in education. I know better than that.

Actually, what they teach at an unnamed institution in the Pacific Northwest where I went to school and have a masters in higher education, we were taught things like students are transient. Therefore, if they are causing a problem, they start a committee and put a student on it because students will probably not be at your institution for more than a couple of years. If you keep putting it into committee, then the students will lose their momentum, they will stop protesting about and they will forget about it as they get involved in other things. Or they'll graduate or they'll transfer, and, therefore, you as an institution don't have to change anything.

If you understand how systems operate, you as a human being are a system in and of yourself. So if it's too warm in here, which is why I've opened up the doors, then you will start perspiring because you will cool yourself off with the evaporation and the moisture from your perspiration. If it's too cold in here, then you'll start shivering which will produce additional energy which will then heat you up, so that your body temperature remains pretty much the same wherever you are. Does that make sense to you?

All systems work this way. The principle is called homeostasis. All systems want to remain at a certain level. Virtually any of you who are working with a bureaucracy, whether it's a state, local or tribal one, this bureaucracy has a life of its own. It's very important for you to realize that. It's not the idea that people representing the bureaucracy are resistant, but that the whole system wants to remain at a certain level or status. If you start changing that, then there will be other elements that will come into play and they will try to bring the system back to where it was before. You'll often see that as a form of conflict. But if you realize that this is simply the way things operate, you may not feel quite so frustrated. You might be able to deal with it in different ways. Does that make sense to you? I wish I had more time to talk about the creative ways that you can make those changes, but it's kind of complicated and I would need to have more time than I do now.

One of the things that I do want to share with you, in terms of the slides and getting back to the idea of frustration, is this. Can I have the first slide, please? This says "Help prevent crack" and it shows a gentleman whose crack is showing as he sits. I do a lot of work in the field of AIDS prevention and substance abuse prevention, and this slide has become so associated with me that if I don't show it, I get complaints from the audiences. Let me just mention that in terms of my sense of responsibility. For a lot of us who work in the field of Indian health, we have focused so much on the field of alcoholism that a lot of us are somewhat surprised by the incidence of intravenous drug use within the Native community. The reality is, for example with AIDS, that we experience a little more than twice the incidents of AIDS that comes through IV drug use in the Native community than in the white community. A lot of people who are alcoholics are called poly-substance abusers. This is where they are not only using alcohol, but maybe using speed, injected amphetamines, and particularly with the Native community, this is very common, particularly in California. There are American Indian shooting galleries, actually here as I am told, in Los Angeles as well as in Minneapolis. So it is an issue, but one we don't spend much time talking about. We are, unfortunately, very familiar with adolescents in terms of inhalant abuse, but, again, this isn't a substance abuse workshop. Next slide, please.

This is a slide that says "snap out of it". By the way, we are being recorded for radio, which is why I'm going to be very clear about what the slides are. Now, with this particular slide of "just snap out of it", this is what I'm hearing when I go to cocktail parties and dinners with a lot of other therapists. I don't think that they're actually saying this inside their therapy sessions, but when we're having dinner together or at a party together, they will be saying things like, "I'm so sick and tired of hearing these people whine," or "I'd really like to shake them like this, or when they're complaining about whatever is wrong with them, to say just stick a sock in it." In other words, the patients are not only under stress, but the therapists and clinicians right now seem to be under a tremendous amount of burnout where it's almost like blaming the victim. It's like getting them to the point of saying, "What's wrong with you? Why don't you get your act together? Why don't you do better than this?" And we're always this focused in terms of what's wrong with you.

One of the interesting things that's changing right now in substance abuse prevention fields, for example, is that we're moving away from the idea of individual responsibility. The way that we've worked a lot, in terms of drinking and smoking, is to tell people, "Take responsibility for yourself. Just say no." And we've found that this has not been particularly useful. So there's been a shift, in terms of recent federal policy with the Office of

Substance Abuse Prevention, to work with the idea of changing the environment, changing the community. We want to work with a community partnership effort, instead of having the community say, "Here are our goals in terms of wellness and health." Now it's not, "You change what you do," but rather, "How do you change the community to give me the message that I should behave in a different, more appropriate way or a healthier way?"

Again, the issue that worries me is the idea of, "What role do we really expect our patients, our clients or the families that we work with, to play, and what are our expectations in terms of the administrations that we often have to deal with?" If we have unrealistic expectations, then it becomes very easy to get into what's called the blame and shame mode. I'll blame you for behaving in a certain way and I make you feel bad about the way that you're behaving. The more that you lower people's self-esteem, whether they're your administrators or the families you work with, the less likely it is that they will have the internal resources to make the sort of change you want them to make anyway. So part of the process is trying to move away from the "just snap out of it, blame and shame mode" to asking people, "How can you think in different ways?"

I was at a conference in Indianapolis about three-and-a-half years ago and I was going to keynote it. So I opened up this thing. The conference was on a national prevention network. And I opened up this brochure and it had my picture in it and said that I was one of the key national figures in the area of prevention. I laughed hysterically at this. I called one of my friends in New York, where I was going next, and I said, "Len, according to this brochure I'm one of the key national figures in prevention. Do you have anything you want me to prevent?" He laughed and said, "You don't prevent anything. You just permit. And I finally realized that's why I had been in denial while working in the prevention field, because my whole work as a therapist is asking people, "What other choices do you have?" In other words, "I'm not going to tell you that you can't do this, but I will tell you, here are the other things that you can choose from instead of doing this."

And this is an issue in terms of working with some of the people in their families, too. One of the interesting things to me as a therapist is, if I ask a person who physically abuses someone that they love, "What else could you do" The most common answer is, "You mean, there was another choice?" And they're not joking about it. It's really the idea that in their own personal upbringing, that was the only thing they had as a point of reference, this was the only choice they had. So what can I do in terms of providing them other alternatives for choices? Next slide, please.

If we don't take cross-cultural issues into consideration, you end up getting what's called "the politician's pencil." The politician's pencil here is showing that you have to erase everything that you've done and start over again. One of the really sad things, particularly in working with communities of color, is that if the person who is before you has basically screwed things up in terms of not understanding how a particular family works or a culture works, it messes up things for those of you who come afterwards. Sometimes, you have to do a lot of repair work to re-establish rapport and trust relationships in terms of how the families see social workers or community health representatives or whatever area you are representing. Next slide. Otherwise you end up with this man who has appointments and disappointments. Next slide.

This is a rainbow zebra that says, "Zebra begins to overcome his anger when he sees that not everything is black and white." Again, this is trying to work with an idea of the clients that you're dealing with, as well as yourselves. If there are only two choices, you do this and you don't do this, then it's real easy to get into the stress or the burnout of a situation. If you start realizing, like the zebra, that it's more than just black and white, that you might have many creative options or choices of dealing with something, things may change.

Our university also has a dental fears research clinic and it deals with people who have not been in to see a dentist for maybe ten or twelve years because they have dental phobia. Now, one of the things in terms of doing research with this population is, that if you think about the last time you were in a dentist's chair, it's one of the times that you basically give all power and control over to somebody else. You're horizontal, you're strapped in, you have all this paraphernalia around your neck. You cannot see what's going on and you can't ask questions because you have all this stuff in your mouth. In fact, when I was having a root canal done last January, I could at least see a little bit on the reflection of my dentist's glasses. Then he asked me to close my eyes so that I wouldn't get debris in them when he started to drill.

Now, a lot of people who are fearful of dentists are fearful because they give up all their sense of control over their life to that dentist. One of the things they've found in this research project is that what would help them is the equivalent of a Sony Walkman. So they would give the patients a little Sony Walkman with a channel to control which tape you would hear and also the volume. This was, in essence, giving control on some level back to that individual. Just giving that control back to them was enough to keep them calm and relaxed.

What I'm suggesting to you, particularly when you're working with families, but also for yourself, is that if you feel in a situation, similar to the zebra, where it's either on or off, that you either have control or you have no control, ask yourself, "Is there is a way of restructuring this interaction so that you at least feel as though there's some element that you have control over?"

At our hospital, I found, particularly in working with very poor families, that frequently, if they were given a responsibility in terms of taking medication-for example, if you really feel that you are being forced to act out how other people want you to act-then at some point you often rebel. If you're only given a choice in terms of do it or don't do it, the only way you can rebel and assert your individuality is to say no. Then as a therapist or as a people helper, you end up having to be an authoritarian in terms of forcing them to do that. That's, at least for me, a very uncomfortable position to be in.

So, for example, with a medication, one of the things I will ask patients is, "When do you want to take this medication? Do you want to take it at eleven-thirty or at noon or at twelve-thirty?" Now, I know that there is not going to be that much blood fluctuation in terms of the amount of medication in your system by a half an hour interval, but it's structuring it in a way that they at least feel that they have some element of choice going on. And this, particularly when you're working with kids and adolescents, may be a way in which you'd want to structure it. In other words, "Do you want to complete this assignment now or in fifteen minutes?" You still get your needs met in terms of your responsibility, but at least there's some flexibility created for the kids. Next slide, please.

How do we fall into these psychological traps in terms of thinking there's only one way of doing something or only one way of seeing something? Remember, I'm a family therapist, so I work a lot with what's called FOO, Family Of Origin. And so, with the family of origin work... next slide—this is the adult children of normal parents annual convention. You can see how many people are in attendance. Our families are often the ones that structure us with the idea of what our responsibilities are, how things are supposed to work, and how the world is supposed to work. One of the things you find is that some families teach you that the world is controlled by powerful others out there. It may be the Republican party, it may be the federal government, it may be God or the devil, but it's certainly not you.

Now, if you come from a family that believes that, then you will have a different sense of what your responsibility and options are. There is also a general American belief that teaches the notion of one voice, one vote-the idea that you have the power to make a difference, that you can create change. If you believe that, then the way that you access systems of help and care are going to be very different than if you believe you have no power at all.

In other words, if you think about communities as being like a bell-shaped curve, some community members are going to see their role in a very different way from how their neighbors see their roles. Does that make sense to you? In other words, if I'm working with a family that feels that it is completely powerless, that it has no influence, that it doesn't make any kind of difference in terms of what they're doing, then I may have to spend extra time selling them the concept that they can make a difference. I may have to teach them certain kinds of negotiation skills or coping skills before I introduce the program that I actually have.

If I have a family over here that's very independently minded, really feels that they can make a difference, that they have a power to create change, then they're the ones who actually start their own programs. They're going to go out and complain and get noticed and start what they want started. You're going to have another group of people who feel as though they can access programs, but they're not responsible for starting them. And so if I go out and say, "I have this really terrific program that we're setting up," then these people will join in on it. Does that make sense to you?

So here are at least three different examples of different types of family responses. If I work with this group of people over here, I'm going to reward them with a sense of, this is a perfect group to work with. They are excited, they want to be involved. Now, I have this family over here that's withdrawn and doesn't want to get involved. That's when it's easy for me to do "blame and shame" in the sense of what's wrong with this particular family. If we start seeing these families as just being at different stages of development, who may respond in different ways, then we can get away from a sense of frustration.

One of the realities, particularly within the American Indian communities, is that some families are raised where there are traditionally certain families or clans who are responsible for very specific behaviors within a community. In other words, if a certain family, or a certain clan is responsible for healing, for administration or leadership, or for being the equivalent of police officers, and if I don't realize that this is taking place within my community, I may try to encourage this family over here to do something that the community doesn't see as being their responsibility or turf or territory. And if indeed I do get them encouraged to do something on that line, the rest of the community will come over and squash them saying, "Who the hell do you think you are, what gives you the right to do something like that? Don't you know that only this family does that, or you haven't been initiated into this?" Therefore, you have no responsibility to do it. But once you realize that there is this kind of variation, then it's easy to get away from the idea that you're wrong because you're not behaving the way that I want you to behave.

Also, for many of you, it's the issue of what have you been trained in. The reality is that I'm not speaking to you individually, but statistically speaking, a lot of people who go into the people helper fields of social work, of nursing, of health care, of psychology, often come from dysfunctional families themselves. One of the roles they often took within their own family of origin was the caretaking role, of being the responsible one, of being a parental child. When you grow up to become a social worker or a health care worker or a therapist, that's exactly the same role you previously had. But then it becomes the idea of trying to give so much to meeting the needs of other people, that you don't really have a chance to meet your own needs.

There's also the issue of thinking, I can't take time off for myself because there's so much need out there. When we started doing these grief from multiple loss workshops over HIV, we did one session where a young man who was a Filipino came into our session. Everybody was talking about, "Well, I lost ninety of my friends to AIDS, and I've lost two-hundred-and-fifty patients to AIDS. And then we came to him and he said, "Well, I've just started in this field a couple of weeks ago and I haven't really lost anybody." And he felt guilty that he hadn't had any losses. One thing that we do is, we ask everybody to bring a ritual object that symbolizes their sense of loss or grief. Some people bring photographs. One man brought a ceramic poodle from the 1950s that his partner used to collect.

This young man brought photographs of his family. He said, "I haven't lost anyone in terms of death, but when I was twelve my parents divorced. It was very upsetting to me and it still affects me to this day. So that's what I brought." So then, I was trying to explain to him that it becomes very dangerous to try to think in terms of relative pain. In other words, if we try to prove that these patients have more pain than these patients over here, or that my pain as a caretaker or caregiver is less than that of the people I'm working with, then it becomes very easy to prioritize with the idea that I don't need to take the time to deal with my own pain because other people's pain is too important.

This particular slide shows two pirates. One has a peg leg, and a hook, and the other has two peg legs, two hooks, and a peg head. This image is working with the idea that sometimes it becomes a little bit ridiculous to try to prove who has the worst pain or who is in the most need. Pain is pain. If you're not taking care of some of your own needs, it means that you may not have the resources left over to deal effectively with the people that you're trying to work with. It's not a need to find out how to apologize for yourself, but of getting the most needs met by using what you have. It goes back to the family of origin in terms of teaching you how to take care of yourself.

There is a comedian called Garrison Keillor and he talks about how there was this Scandinavian man. This man falls down in the snow and writes in his own blood, "I'm okay". In other words, some of you come from families where if you have the slightest bit of pain or discomfort, that needs to be dealt with. Others of you come from families that taught you that you don't get any kind of attention unless something physically falls off your body.

And this same thing applies to some of the families that you work with. A number of the families that I've worked with, according to their cultures, come from an idea that you can't give into pain. This is the way that you deal with it, you ignore it. For those people, they don't want comfort. They don't want you to pay attention to them when they're in a lot of pain because their family of origin has taught them not to acknowledge pain in a certain way.

You should be aware that in your experience, I'm assuming that you're familiar with alcohol abuse and the concept of adult children of alcoholics, that the idea that certain roles are played out within the family. One of the roles that isn't talked about very much is the idea of the invincible child, the invulnerable child. That even though he or she is growing up in a very dysfunctional family, they turn out okay, that they don't show any evidence of being dysfunctional themselves.

The research that's being done asks, what do these children have in common? When we look at a lot of these kids as adults, one of the factors of what's called resiliency, the ability to survive a dysfunction, seems to be that in growing up that child had someone-and it may not have been a family relative. That someone could have been someone like yourself, a health care worker.

That someone could have been a school nurse, or it could have been a school librarian-who said to the child, "You have every right to be angry or to feel the emotion that you're feeling. Anyone in your situation would feel this way." Because if you think about a lot of dysfunctional families, children are taught to not think and to not feel. A lot of kids are taught not to acknowledge their emotional state. And for an outside adult to say, "It's all right to feel this way," is very powerful.

What's interesting is that this outside adult doesn't have to actually change the situation at all. It's not an intervention where this person comes in and changes the family system. It's simply the acknowledgment that it is all right for you to feel this particular way. And that's something that I might suggest for you. Because you're not in therapy and I'm not your therapist, I won't do this with you. But if this were therapy, then one of the things I would ask-playing with the concept of an inner child-is, at the stage of life you are in now, I would ask you to go back in a dream state or an altered state of consciousness to a stage in your life that was really critical, when there were problems going on. Maybe you were six years old, maybe you were eight years old, or however old you were, you go back at the stage you are now in as a functional adult and take the message, "I come from your future and I bring back the message that you've survived this." What gift would you bring to that child's self? Would you bring a tree? Would you bring a word? Would you bring some kind of strength? Would you say, "I bring you the gift of hope," or "I bring you the gift of courage?" Think about what sort of gift you would want to give to that child's self.

And if you can do that with yourself, it may be a very useful way of thinking about what you want to do with some of the kids that you come into contact with. What kind of gift would really provide encouragement for some of the kids that you come into contact with? What kind of gift do they really need? Next slide, please.

One of the ways in which some of these things are talked about, traditionally within American Indian cultures, is through spirit healing. This is a fun slide for me. My father's side of the family is from the Taos Pueblo. When I was back home for our feast day, I found some of these old photographs that had been taken around 1905 while I was working with the idea of how story telling functions within the community. Next slide, please.

For a lot of the traditional teachings, the stories are a means of sharing information in a way that doesn't threaten people. In other words, one of the things we're taught as caregivers or caretakers is to often confront people around certain issues.

There's a psychiatrist whose name was Milton Erickson. He passed away a number of years ago, and this quote that I'm about to give you is from the 1950s, so it's sexist and it's before DSM-3R, so cut me some slack on it. What he said was, "What we call a neurosis is really the complex way in which an individual, the patient, deals indirectly with his problem." You see, if the patient could deal directly with his problem, he or she would probably not be in therapy with you. A lot of people may have spent literally decades perfecting these self-defense mechanisms of denial, of projection, of this isn't really about me, or you don't understand. That sort of thing.

One of the powers that the stories have is to be able to go beyond this self-defense mechanism and to allow one to talk about things in a certain way. Could I have the next slide?

For example, a lot of the stories, at least in our culture-or in my mom's tribe or my father's tribe—are about Coyote. Not all communities have stories about coyotes. Sometimes there will be stories about Rabbit or about Raven, or the Canadian people have a Wiskejiak. The stories that are told about Coyote will cover a wide range. They'll talk about Coyote being a creator or Coyote being very heroic. They'll also say that the Coyote was involved in sexual abuse with his children, incest abuse. They'll say that the Coyote is a man who has sex with other men, or that Coyote likes to dress up in women's clothing periodically. We can see that Coyote covers the whole range of experiences that people have.

As a clinician, I might work with an incest survivor who will not have a vocabulary to describe what happened to them. One of the interesting things about these stories that I've mentioned is that if you hear all the Coyote stories, you do know what incest is about. And then ,too, you do have a way of talking about it, you do have a model for it. Perhaps most importantly, the models from the Coyote stories tell a child that if this happens to you, it's not your fault as a child. That the blame was not towards Coyote's daughters for having Coyote abuse them. Rather, that the blame was Coyote's because he was more powerful, he was more experienced, and he should have known better. So the punishment is focused there.

As a clinician, I often find that with incest survivors, there's a real sense of, "It must have been my fault. I must have been a bad person. I must be the one responsible for this." And so one of the things that the stories do is, they give road maps or blueprints, ways of understanding what's taking place or happening to you. Does that make sense to you?

On another level, they also work in a very special way. Can I have the next slide? The elder will be telling a story that gets away from what I call the Ten Commandments approach. The Ten Commandments approach is "thou shalt not".

You probably find, in working with the families that you do, that this approach may not be a very effective way of dealing with the situation. It may be the way that the courts use, but telling a family don't do this anymore, or thou shalt not, will often set up a sense of rebellion. Remember what I was talking about before? That if I tell you not to do something, the only way that you can exercise any sense of independence is to rebel against me, to defy me.

One of the ways that the elders would use stories would be things-well, like with my mom's people, there are lots of stories about Rabbit cheating. That Rabbit loves to gamble and he also loves to cheat. And they'd play a game called slahal, or stick game, or hand game, and Rabbit was busy cheating Porcupine. Porcupine gets very angry with Rabbit and says, "You'd better watch it because I have the power of thunder and lightning, and if you keep cheating on me I'm going to hurt you." That Rabbit cheats again, and Porcupine sings. (*Sings*)

Clouds started forming across the sky. There's a flash of lightning and the sound of thunder. Suddenly the lightning flashes down, and it flashes so close to the Rabbit's ears that it burns all the hair out of the inside of his ears. That's why even today, when you see rabbits, they have no hair on the inside of his ears.

But still Rabbit cheats on. And when you play this game, you hold up the playing pieces that are actually made out of bone, and you show them off and you do elaborate dance motions with your hands, because you're saying, "I'm such a good player that you can't possibly guess where I'm hiding my playing pieces!" And still, Rabbit cheats. So Porcupine calls the lightning down and it blows all the fingers off the hands of Rabbit. So nowadays, when you see a rabbit, that's why they have paws instead of hands, like you and I do.

Well, the old people tell a story like this one to a child who has been caught cheating. Rather than say, "Don't cheat," they'll tell this legend or aspects of this legend and say, "Do you want to end up with hands like Rabbit?" This places the responsibility back into the area of the child—"Is this the way that you want to behave, is this the path that you want to walk?"—by giving different choices to that child. If you say, "You need to act in a different way," then often, the child gets very defensive about how they're receiving that information.

For example, when I work with parents of severely disabled children, where the children have Spinal Bifida or Down's Syndrome or something else, often with families like that, you'll find where there is so much concentration on meeting the needs of the disabled child that the marital relationship between the mother and father starts to go on the rocks. Frequently, the father is pushed further and further away from parenting responsibility and the mother becomes more involved and more engaged in the responsibility of the child rearing.

If I tell parents like that, "You probably need to watch what's going on in terms of your husband and wife relationships," then it's very easy for them to get defensive. But if I start telling a story, then it becomes the idea of, Do you know how bears parent? It's really interesting. This is true. You can watch any "National Geographic" special. In reality, what bears do is the mother bear does all the parenting, and if the father bear actually comes near her cub, she will chase him away. So a male bear never really has an opportunity to develop parenting skills.

But a wolf is a very interesting family because the mother wolf will be baby-sitting the kids while the father wolf is out hunting. Then the father wolf will come back and relieve the mother wolf, and she goes out hunting. What's fascinating to me-this is all true. I don't make any of this up. What will happen is, they'll get an aunt wolf or an uncle wolf in who will baby-sit the cubs while mom and dad go off by themselves. The eagles parent in a different way. The salmon parents in a different way. Spiders parent in a different way. So by giving several different examples of all these options, all these choices, I'm giving information that can be used by that family, but in a way that doesn't say, "You're doing it wrong now." Rather, it's saying that there are appropriate ways to behave and inappropriate ways to behave. There are times when you may need to be the bear, and times when you may need to be the salmon, and at times, you may need to be the wolf. Be aware that this may be the first time they realize that there's an option in terms of the way they ordinarily do things.

Again, if you grew up in a very dysfunctional family yourself, without a sense of choice or with this is the way it has to be, then the idea that there are alternative ways of behaving may come as a great shock to you.

I remember when I was in junior high, I spent my first night at a white person's home. You know how you go overnight and things. It was the most amazing thing to me because the daughter of the family yelled at her parents. I was in a state of shock. I didn't know that you could yell at your parents. I called the next morning at about seven-thirty for my family to come and get me because I just couldn't handle it. But again, it's the idea that there are different ways of behaving, there are different options or different choices. Some of the kids that you're working with don't really understand that. They have not had a model saying that there are these other options. Next slide, please.

Our old people tell us, "If you're really sad, if you're really depressed, you need to see with the eyes of an eagle. All these traditional legends are really focused around giving different alternatives of behaving. If you understand them not just as entertainment, but you actually see them as building blocks or blueprints of behavior, then the eagle sees the world in a very different way than a lot of the other animal people do. So when our old people tell us, "If you're really sad, if you're really depressed, you need to be an eagle," what they mean is that a problem that's right next to you, right up in your face, blots out your vision, and so you can't see a way to get over it, or under it, or around it.

To be an eagle means you emotionally distance yourself from that problem. And if you get far enough away, even the largest problem looks small. From that vantage point, you can see a way of dealing with it. That's why, traditionally, eagles are associated with leadership. One of the most important qualities a leader should possess is to see where a road will lead, and what the consequences of their behavior will be.

At the same time, the old people say, "If that's the only option you have, if the only set of eyes you have to see with are eagle eyes, it means that you will always be emotionally distant from other people. You'll never be able to form close emotional attachments with other people. So it's not enough to just be able to see with one set of eyes. This is one of the things that legends teach over and over again in terms of seeing the world in different ways.

There's a legend that goes like this. A long time ago, Coyote was traveling along. In our language at Warm Springs, we call Coyote, Spil-yai. And Spil-yai literally means one who copies, one who imitates, one who Xeroxes, because we have to update these things periodically. So Coyote always tries to do what other people do. As Coyote is traveling, he sees something very strange, very mysterious. He sees Wililik, a rabbit. But this is no ordinary rabbit. This rabbit is twati, an Indian doctor, a medicine person. As Coyote watches, the rabbit sings. (*Sings*) And the eyes of the rabbit fly out of his head and they sit on the branch of a tree and look down at Coyote and the rabbit. Coyote is amazed by this.

And then Rabbit says, "Weenum," which in our language means come here. Sure enough, the eyes of that rabbit float down gently and they fall into his eye sockets again so that the rabbit can see. Well, Coyote ran up to the rabbit and said, "Show me the trick, teach me the trick". Rabbit, he says, "No". Coyote tells him, "No, really, show me the trick". But Rabbit just says, "No".

By the way, let me step out of this for a moment, so that I may add a footnote. One thing, for those of you who work with different kinds of communities, is that you'll find that different communities will ask for things in very different styles. There are some communities where you don't accept something that's offered to you the first time. If you're offered something like food or help, you turn it down because, otherwise, you'd seem greedy or impolite. So something is virtually offered more than one time for you to fit into this mode of behavior. This is true in African communities, it's true in certain Asian communities, and it's true in some American Indian communities. There are also differences in the way in which one signals for a request in terms of asking for help.

In this instance, Coyote asks four times, and four times Rabbit says no. The fifth time the Coyote asks, Rabbit says, "I will show you how to do this thing, Coyote, but you must never do it more than four times in one day. If you do it more than four times in one day, something terrible will happen to you." Coyote says, "No problem. Show me the trick."

Then, Coyote learns the medicine song of the rabbit. And Coyote sings. (*Sings*) Sure enough, Coyote's eyes fly out of his head and they sit on the branch of a tree. They look down at the Coyote and Rabbit. And then Coyote says, "Weenum, come here." Sure enough, Coyote's eyes float down gently like a leaf falling in the Autumn, they fall into his eye sockets and Coyote can see again.

Well, Rabbit leaves to go into another legend. But Coyote, he practices a second time. He does it a third time. He does it a fourth time. And he thinks to himself, "Why am I wasting my time doing these here practice runs when nobody can admire me? Nobody can see how clever and how wonderful I am. They don't even have evaluation forms for me!"

So, Coyote wanders out looking for the closest village of Indians. He finds one and he calls them all together. "Check this out," he says—which is loosely translated from our language. All the people gather in a circle, and Coyote sings. (*Sings*) Sure enough, Coyote's eyes shoot out of his head, they sit on the branch of a tree and they look down at all the Indian people.

All the Indian people are impressed. Just like if my eyes were to roll out of my head right now and fall down on this carpet, you would be impressed, too. Coyote says, "That's nothing, watch this!" And Coyote says, "Weenum, come here." But nothing happens. And Coyote says, "Tuktu, hurry up and get down here!" But the eyes will not budge. They just stay up there. All the Indian people, they could take a joke, so they laugh.

Just about then, a crow was flying by. The crow saw the eyes and thought, hum, lunch. He swoops down, he eats Coyote's eyes and he flies away. Now Coyote has no eyes. Coyote begins to feel sorry for himself and he says, "Inee snawal pu'lult ini," which basically translates to, "I'm just pitiful, I'm blind." It's actually a pun. But one of the things you find is, it takes longer to explain a pun than it does to just say it. It's really not worth going into detail with it. But it's really funny. And he was having to feel his way around like this.

Now, all the time that he was yelling and feeling his way around like this, someone was listening and, it was Lukisyai, a little mouse. And Mouse says, "What's the matter with you, Coyote? How come you're screaming around this?" And Coyote says, "Inee snawal pu'lult ini. I've got no eyes, I'm blind. I have to feel my way around like this. I'm just pitiful." Mouse thinks about this and he takes pity on Coyote. He says, "Shawai yunwai, you poor pitiful thing. I'll tell you what. I've got two eyes. I'll share one of my eyes with you." So Mouse gives one of his eyes to Coyote.

Coyote is the size of a small German shepherd, and Mouse is so small that he'll fit into the palm of my hand. So when Mouse took out his eye and gave it to Coyote, it was so small that when Coyote dropped it into his eye socket, it kind of just rolled around like a little b.b. shot. And this mouse eye was so tiny that it hardly let in any light at all. So for Coyote, it was just like looking through this little, bitty hole, and he was still having to feel his way around like this. This mouse eye was really only good for seeing things close up.

So still Coyote was complaining, going, "Inee snawal pu'lult ini." And someone else hears him. This someone else is Su'ultlayai, the buffalo. And Buffalo says, "What's the matter with you, Coyote? How come you're screaming around like this?" Coyote says, "Inee snawal pu'lult ini. All I've got to see with is a mouse eye. It's so small it hardly lets in any light at all. I have to feel my way around like this."

So Buffalo takes pity on Coyote and says, "Shawai yunwai, you poor pitiful thing. I'll tell you what. I've got two eyes. I'll share one of my eyes with you." So Buffalo takes out one of his eyes and gives it to Coyote. Now, Coyote is the size of a small German shepherd and the buffalo is about the size of a Volkswagen van. So when Buffalo takes out his eye, it was so large it wouldn't all fit into Coyote's eye socket, and half of it hung out here on his cheek. And it let in so much light that Coyote was blinded by all that light coming in. So poor Coyote was forced to walk around with these mismatched eyes which gave him a terrible headache.

Now, this is not where the story ends, by the way. If we have time, I'll come back and finish the story. But in terms of how it would be traditionally used, traditionally you wouldn't tell this story when you work with kids and say, "This is what you should have learned." Instead, you tell the story like this and you ask a child, "What did you learn," because it's a way of monitoring a child's development. And if a child didn't understand all the things you were trying to teach, then you'd tell a simpler version of the story, wait, and figure out that the child wasn't quite ready for it. You'd tell the same story later on. But it was a way of shaping the child in a certain way where you knew what you wanted the child to end up with. This is a very different situation than the one we usually have in working with kids in 1992, where we have a relatively short amount of time available to work with them, and we want them to accomplish something.

One of the traditional ways of education is, you should know where you want the child to end up, but it doesn't mean that every child will go on the same pathway. One of the jobs my father used to have was that of a shepherd. You learn right away that sheep don't go in straight lines. As a shepherd, you know where you want the sheep to end up. A lot of times when we work with conventional school systems, it's like getting on a bus. We all get on the bus together, we all go to the same destination and we get there at exactly the same time. That's simply not the way kids think. Kids are much more like the sheep in terms of going in different directions and milling around, even though they will eventually end up in the same place.

With that in mind, may I have the next slide, in this story, for example, we have the mouse. Mouse, among other things, is the idea of being concerned with small, every-day events of living, to be concerned with food, with shelter, with family. A lot of people go through their whole life only seeing with the eye of a mouse, only being concerned with the small, every-day things. But if you're a mouse, you don't see the big picture of things. You don't see how things relate. So it's a very powerful way of seeing, but it's only one way. Next slide.

In this story, we have a buffalo. In the cultures that had access to the buffalo, they represented generosity and sharing, among other things. Every part of the buffalo was used, but if that's the only set of eyes you have to see with, it means you give all of yourself away, so that you have no resources left for yourself. You're not really doing what's called nurturing of the self. Buffalo is a very powerful, valuable way of seeing, but it needs to be balanced with other ways of being and seeing as well.

Can you see that, in terms of using these kinds of traditional examples, when you're working with the kids, these stories get their interest in a very different way? When you're working with families, it's a way of saying. 'Here are different possibilities of modeling." If you're working in your own agency, you'll see that sometimes your administrator may have a way of doing administration that's like a wolf, or like a buffalo, or like a crocodile. It may be, that the way you are responding is a different way, that you tend to respond like a rabbit.

One things I used to do with teachers is, I'd ask them, "What kind of animal are you as a student?" And then I'd ask them "What kind of animals are you as a teacher?" While working in the Canadian territories, I became fascinated when I found that in all cases as students, people identified as animals of prey. But as teachers, they all identified as predators. Isn't that interesting?

If you learn best in a certain style, if you respond best in a certain style, and you think about your work with both of them, is that the style that you're interacting with people? In other words, if you yourself respond best in terms of being nurturing or listening in a certain way, or challenging in a certain way, is that the way you're dealing with the families that you're working with? I'm not saying it's the right way, but I'm saying if what you're doing isn't working, then you might want to try something different. If what you're doing is working, you don't fix what's not broken. But the chances are, for about ten to fifteen percent of any families that you work with, the standard way that you're going about doing something is probably not going to be successful. And with those families, it becomes very easy to go to the "blame and shame" mode of you're not behaving right, that you're the one I want to snap out of it, you're the one I want to shake or stick a sock into it. It may be that I'm using the same technique or approaches that have worked with these families over here, but that they are not working with you. If they're not working with you, it could be because you're not one of the families over there. Rather than keep trying the same thing that does not work, maybe I need to try a different behavior with this family, whether it's a storytelling or some other kind of technique or approach. Next slide.

I guess I'll show you this in terms of making sense of what I just said. I teach for the Kinsey Institute. I'm on their faculty. The Kinsey Institute is the world's largest institute for the study of human sexuality, gender and reproduction. It also has the world's second largest collection of erotic art. Do you know where the world's largest collection of erotic art is located? It's actually the Vatican. I don't make any of this stuff up.

Do you all agree that this is what sperm looks like? As far as we know, this is true. It's also interesting, as some of the works in the field of human sexuality show that there's no difference in relative size between a sperm whale and a hamster. Isn't that interesting? Sperm is relatively the same size. I'm sure there's a lesson in that for all of us.

Anyway, there used to be a tradition among European people, based on ancient Mid-Eastern traditions, that inside a man's sperm was contained a perfectly formed little human being. When a man would have sex with a woman, he would basically implant this perfectly formed little, tiny person inside a woman's womb. In other words, a woman contributed nothing to life. This is not an American Indian tradition, this was a European tradition. American Indian people work with the idea that just as an eagle needs two wings to fly, so ,too, do you need both the male and female principle. The male and female both contribute equally to life, which we know is scientifically true. Ha. But the ancient traditions of Europeans do not teach us this.

Now there's a saying that I wouldn't have believed it if I hadn't seen it with my own eyes. But the opposite of that is also just as true, that for a lot of people if I hadn't believed it, I wouldn't have seen it. And for Europeans, the belief system was so strong about men's sperm, that inside was contained this perfectly formed little human being, that when microscopes were finally invented in the 1670s, can I have the next slide, this is what people saw. I don't make up any of this stuff. Researchers in the 1670s, when they invented the microscope, actually drew and sketched teeny, tiny little people inside the sperm.

This is a whole issue, that even though people have the same experience, their interpretation or understanding of the experience will be very, very different. This is just as true of the families that you work with, regardless of their ethnicity or their culture. It's very important that you realize this. Even though you, as an individual, are going out and doing the same thing with different individuals or families, the experience that they have will be different from family to family and from individual to individual.

There is a researcher by the name of Jane Brown at Chapel Hill College in North Carolina. She did work with Madonna. Well, not with Madonna. She works with Madonna's work. How many of you have cable TV or adolescents who know about

Madonna's video of "Papa Don't Preach"? Let me ask that in a different way. How many of you are not familiar with the "Papa Don't Preach" video? Which is funny, because that's a classic video of Madonna as opposed to contemporary Madonna. In the classic Madonna video, "Papa Don't Preach" is black and white, it has a message. The lyrics are, "Papa, don't preach, I'm keeping my baby." Now, when that came out, Planned Parenthood and Catholic church groups became very upset because they felt the song was about teenage pregnancy and how she was keeping the baby after having had premarital sex.

In the video itself, it shows a young man who's very nice looking and who spends a lot of his time underneath greasy cars. Then there are cuts of the man who appears to be Madonna's father in the video and he spends all of his time not looking very happy. And the cut between that is Madonna kind of singing and dancing up and down a lot, "Papa, don't preach, I'm keeping my baby."

Now, when adults all saw this video, they all said, "This is about teenage pregnancy." And Jane Brown said, "This is how adults react, but what do the kids actually think?" So she took a group of young, teenage, white girls and she showed this video to them, and ninety-eight percent of the young teenage white girls saw the video as being about teenage pregnancy. But when she showed this same Madonna video to young African-American males, the majority of them saw it as being a conflict between the father and the boyfriend. And with "Papa, don't preach, I'm keeping my baby," baby referred to boyfriend and had nothing to do with teenage pregnancy at all.

This is a whole issue of how different people see the world in different ways. If you have expectations, in terms of how a family should respond, it may be because you are using a very different set of eyes than that family is using.

With that in mind, can I have the next slide, please. This is audience participation. I always warn you. When you see this particular design, what is it that you see? A wave is the way some of you are seeing it. And a lot of you are seeing it as a wave, especially those of you in the radio audience. It's this kind of spiral thing, that you're seeing as a wave because you are literate and you've been trained by American cultural literacy that black ink on white paper has a very special message for you.

This is actually an ancient American Indian design. At the Kinsey Institute, when AIDS first became an epidemic, we were aware of the fact that unprotected anal intercourse is one of the high risk behaviors. But there was a general American belief system which claimed that only gay or homosexual men would have anal intercourse with one another. Now, we know from our most current research that thirty to forty percent of heterosexual women record having experienced anal intercourse. We know from our work with the Navajo that thirty-two percent of the Navajos reported having experienced heterosexual anal intercourse. At any rate, what we did at the Kinsey Institute was use the Kinsey documents to be able to show and illustrate fifteen hundred years of heterosexual anal intercourse on seven different continents. And this is documented through pottery, through sculpture, and through paintings.

This particular design came from a piece of Peruvian pottery which clearly shows heterosexual anal intercourse among the two figurines on top. This design, that looks like a wave to some of you, was a design that was around the border of this piece of pottery. It does not represent a wave. If you are aware of geography, there are not a lot of waves in Peru.

It's actually an American Indian design that exists, among others, too. One Hopi, for example, I think it was Frederick Kabotie, was writing a book about the ancient pottery of the Membres people. And he talked about this design as being one that, among other things, represents sexual intercourse that you're seeing as a wave because your only focusing in on the black spiral. But there's a white spiral here at the same time. And the white spiral and black spiral are copulating or coupling. So on that level, particularly in the context of the figurine, it definitely shows sexual intercourse. It represents other things in the sense of a kind of a balance and the way that a yin-yang design represents a balance within Asian communities.

But the point that I'm making here is that this is what cross-cultural issues are all about. That if you come from seeing the world in one way, you see this as being the black wave. If you understand that other cultures or other traditions teach you to see it in a very different way, suddenly your perspective changes. This is what therapy is all about. That a lot of times when you're working with families and you're able to institute a change in the way that they understand things, it's like this wave.

In other words, you were able to see a black wave. But now that I've pointed out the white spiral or wave, it's almost impossible for you to go back and only see this as a black wave. This is what happens when you do really good therapy with people. They don't forget their past, but they understand their past in a totally different way.

There was a therapist by the name of Virginia Satir, and Virginia talked about therapy like being in a room that's very crowded with furniture and all the lights are turned out. And you spend your time bumping into the furniture. What therapy does is, it turn the lights on in the room. It doesn't rearrange the furniture, but you don't have to bump into it anymore. This is one of the things you deal with in working with these families, that you're not necessarily changing their history, but you may be changing the way in which they understand or approach their history. I would make the suggestion that the same is true for you. If you can start to see that when you are getting burned out, or when you are getting stressed out, then in what ways can you create change for yourself? For example, some people who feel as though they're burned out are starting to get away from taking two weeks off for vacation. Instead, they have a day that they'll use, maybe every six weeks or so, that's a health day for them. They will take that day out of their vacation and get away from work and concentrate on their own needs, whether it's getting away physically or just being able to get away from their work situation. That's one of the coping ways that some people have. Next slide, please.

If you don't realize that people see the world in different ways, then you can end up like this cartoon of a little dog with a flying saucer that has things that look like fire hydrants coming out, and the fire hydrant is saying, "Greetings, earthlings, we come in peace." And if you only see the world in one way, you can make terrible mistakes in terms of dealing with others. Next slide.

Also, I feel a responsibility, as long as I have you here, and we do have a couple minutes, to deal a little bit with gender issues. The reality is that some of you are men, and some of you are women and you know who you are. But the issue here is that women and men are different in the sense of how people perceive them. We know from our gender attributable studies that within one-tenth of a second we make a decision as to whether or not you think someone is a man or a woman. America is a sexist society where you treat someone differently if you believe them to be a man than you'll treat them if you believe them to be a woman. So, in this illustration of this little boy pulling up the skirt of a little girl, there are these gender differences that we don't talk very much about. Next slide.

When you are dealing with the parents and the families that you deal with, you will have a different experience if you are a male social worker or caregiver than you will if you are a female. There will also be a difference within certain cultures, especially American Indian, that your experiences as a very young person will be very different than if you have gray in your hair. The ultimate outcome may not be particularly different, but your initial rapport with the family, how people respond to you, how people listen to you, how people respect you, may be different according to your gender, may be different according to your age, and also different in terms of your ethnicity.

Some of you are white people and you know who you are. And one of the things about this is that a lot of white people work under the idea that they don't have all the same advantages that we do as Indian people in terms of working this. If you are a Native person, or one of the disadvantages that I have as an Indian, is that I am expected to be perfect. As an Indian, I am expected to know the community, what's politically correct, what families are involved, but I'm not expected to make a mistake. If I do make a mistake, and I will because I'm human, then people will talk about me behind my back. But if you are a white person, people expect you to make mistakes. Do you realize what incredible freedom that is? In other words, as a Native person, doors will open for me probably a little bit faster than they will for a non-Indian person. But if I don't have something to back it up, if I don't have any substance or quality, then the door will slam just as fast for me as it will for you. So there are certain advantages and disadvantages.

One thing that I was sharing with a friend of mine is that there is a non-Indian man who is married to a Navajo and his name is Barry Tolkien. Barry, probably better than any other white man I know, has done an excellent job in terms of interpreting American Indian traditions and cultures. I told this to Barry one time, that the difference between the two of us is that you can be rude to old people. A lot of times you'll ask questions that are really insulting and rude, but you do it with such innocence because you don't realize that these are really rude and insulting questions. And a lot of times old people are so shocked by the fact that you just come out and ask it in that way that they'll actually give you a direct answer. Where, for someone like me, I would have gotten legends and stories and set-up situations of learning, and it would have taken me two months or two years or ten years to learn what you just found out by blurting out something rude.

I don't recommend that you blurt out something rude to old people all the time, but every now and then it works. What I am saying is that our experience as Native people or Indian people are going to be different. It's neither right nor wrong, but it's important that you realize that you might not always be able to work well with a particular client.

One of the things we find with some Native children is that they feel really comforted by having some kind of physical contact. But if that child was sexually molested by someone who looks like you, if you reach over to try to give him some comfort, it's not going to be a reassurance to that child. Even though you may be a wonderful professional and you have terrific skills, it may be that you physically resemble someone who hurt that child. It may have to do with age, and it may have to do with gender, and it may have to do with your ethnicity. It may be that you are not the most appropriate social worker or caretaker in terms of dealing with that particular child. It has nothing to do with your ability or your qualifications, but it just may be a poor match.

On another level, there are some of you-not everybody—who may have had a very traumatic experience dealing with someone in your past that the child reminds you of, or that the parents of that child, or the foster placement of that child reminds you of, and you have your own business to deal with. That, again, may be where you're not a very good match with that particular child. It has nothing to do with your professional qualities, but it has a lot to do with your personal issues. Next slide, please.

This says, "There you go again. The minute we get into a meaningful discussion about our relationship, you withdraw," and the slide shows a male and female turtle. And this is an issue in terms of dealing with kids. In the gender differences that we've looked at, a lot of girls will tend to share information in a structurally different way than boys will. What will tend to happen for a lot of kids and adults is that males tend to listen to a problem and first discount it-it's not that bad or it could be a lot worse-and then offer an immediate solution to it. Women or girls tend to listen to a problem and then to acknowledge it by offering a similar situation they've experienced, but they do not offer a solution.

To give you a concrete example, there was a woman who had a mastectomy, she had a breast removed. She said to her husband, "I feel so disfigured by this, from all this scarring." And the husband's response was to say, "Well, it's really not that noticeable." He discounted it. "It's really not that noticeable. But if it really bothers you, you can have further plastic surgery to reduce the scarring." So, there's the immediate solution to it. At that point, the wife bursts out crying. She said the same thing to her sister, and her sister said, "I understand exactly how you feel. When I had abdominal surgery, I felt really disfigured from the scarring." There's no solution offered, but there's an acknowledgment that I understand that you are in pain or I understand that you have a problem.

If you are a woman social worker or caregiver, you have been socialized to respond in terms of a helpful way, in a different way than a lot of men are taught or socialized to respond to a problem.

Another thing to consider, for some of you who are working with female clients, is that they may not want a solution. What they may want is to be acknowledged, or they may want you to hear that they are in pain, that they are uncomfortable, or that they are unhappy. They may just want you to listen without offering an immediate solution to them, which is a tendency a lot of men will have as givers. So there are these kind of gender differences that I don't have time to go into more detail with, but it's important that you be aware that they are there. Next slide.

This is a slide that says, "The chances of men and women understanding each other" are like this illustration. The cowboy and the sister. The nun in the sense of being... next slide..."slim and none". But even though there may be difficulties in terms of being unable to match up male and female issues and caregiving, you need to realize that sometimes there are differences there that are going to interfere or sometimes enhance what it is that you're doing. Let me just do a reality check. What time are we supposed to be ending?

Woman: Four-thirty.

Terry Tafoya: Thank you. So I have some more time. Next slide, please. Well, what the hell? I'll just go ahead with this. Another thing I've found, in terms of the frustration in working with families, is starting to talk about what I mentioned to you before. Different families are at different stages of development. Different families and different individuals have different needs.

This comes from work that was done by a therapist whose name is Carol Pearson. She works with the idea that people go through stages of development in becoming a hero. In other words, the ideal is that everybody should be the hero of their own life. One of the first stages of development, that she would suggest, is that of the orphan. The orphan is the idea that I don't have much strength. I don't have much power. I don't have many resources. I need to depend on a powerful other, a substitute or surrogate parent. Some of the clients you work with, not just children, but also the parents of some of the children that you're dealing with, will be in the orphan stage themselves. If they're in that stage, what they want from you as a caregiver is to teach me everything. Do it all for me. Tell me what I'm supposed to do on Thursday at twelve-fifteen, because I don't want to figure that out for myself. I want that all to be handed over to me. And if you don't give me that kind of information, that kind of structure, that kind of help, then I will think that you're abandoning me, that I don't think that you really care about me.

With that in mind, let's move on to a different story. Let's think about a very famous orphan from American culture, from that great piece of literature, The *Wizard of Oz*. Dorothy, if you think about her, was a very famous orphan. That's why she lived with her Auntie Em and Uncle Henry. She was an orphan. And if you think about her in the beginning of the movie-by the way, The *Wizard of Oz* is one that I use a lot, because if I use only traditional American Indian legends, particularly from Warm Springs or from Taos, not everybody, for some reason, knows those. If I use traditional stories from European cultures, like Rumplestiltskin, I get really bizarre responses because people tend to merge all the European fairy tales together. So if I ask, "What happened with Little Red Riding Hood?" I get these things with glass slippers and pumpkin coaches.

The Wizard of Oz is something that even if you're working with kids from other cultures, they will often have seen *The Wizard of Oz* on television. It's something that does seem to be a universal, at least on some levels, for a lot of Americans, whether they're American Indian or not. So that's why I'm playing with this. Now, in *The Wizard of Oz*, think about the very beginning of the movie. What happens with Dorothy? What's her conflict? This is audience participation time.

Woman: She's mad at the woman who wants to get rid of her dog?

Terry Tafoya: Right. Miss Gooch wants to exterminate her little dog, Toto, because the little dog has bitten her. Actually, I didn't want to go into this much detail, but the Toto was digging in the garden, he chases Miss Gooch's cats, and then bites Miss Gooch. That's why Miss Gooch wants to have the dog eliminated, exterminated.

So Dorothy's response is what? The first thing she does, as an orphan, is go to Auntie Em and Uncle Henry saying "fix it." In other words, "I don't have the power, I don't have the ability to deal with this, so you fix it for me." Now, Auntie Em and Uncle Henry can't do that because Miss Gooch is a very important and powerful person in their community. If you remember, this doesn't take place when Dorothy is here, but after Dorothy has left, Auntie Em turns to Gooch and says, "I've been waiting twenty-five years to tell you what I think of you, but being a good Christian woman, I can't." So she's able to confront Miss Gooch, but she really can't change the situation. This is a concern that some of you need to deal with in terms of the families that you work with. A lot of times they want you to provide everything for them, not because they're needy, but because that's the only way that they're seeing the world at that particular moment in time. Next slide, please.

When Dorothy encounters this witch figure, this is a confrontation that, when she has to deal with, she calls out for help. When that help is not really provided for her, then she changes her approach. Next slide, please.

When she runs away, she meets Glenda the Good Witch of the North who asks her the question, "Are you a good witch or a bad witch?" Now, if you don't think about a witch in terms of Halloween, and if you don't think about a witch in terms of wicked, neo-pagan religions, or Biblical issues, then witch in the vocabulary of The *Wizard of Oz*, or the land of Oz, means a person of power. In other words, a witch or a wizard is a person in power. And so Glenda asks Dorothy, "Are you a good person of power, or are you a bad person of power?"

Now, in American Indian tradition, you have the concept of a witch-like figure. Like in Hopi, it's called paihunta which means two-heart. Then you also have someone who's a medicine person. They have very similar powers. The difference is that a medicine person uses their power for the good of the community, and a witch, someone who is two-hearted, knows the path of the heart, the red road if you will, but deliberately chooses not to walk that path. In other words, their concern is for their own needs, their own selfish needs. This is really what Glenda is asking Dorothy. "Are you someone who uses your power for the good of your community, like the Good Witch of the North, for example, or are you someone who uses it for your own selfish needs, like the Wicked Witch of the West or the Wicked Witch of the East?"

Now, Dorothy, being an orphan, doesn't understand that she has power at all. Do you remember Dorothy's answer to the question. "Are you a good witch or a bad witch?" (*People respond*) "I'm not a witch at all." That's exactly right, because she doesn't see herself as being a person of power. And this is critical for you to understand when you're working with certain families. Certain families, certain children that you work with, and certain parents you work with will not see themselves as having any power at all. Not because they're bad people, but because that's where they are at in that particular stage of their development.

So Dorothy has to leave, she goes to find out her own power. She has to walk that Yellow Brick Road. Next slide, please. To discover her own power, to discover what her strengths might be, this stage of development is called the wanderer or the seeker.

This is when she's walking down the Yellow Brick Road. Some of the patients and some of the clients that you work with, some of the individual children and the parents, are going to be in the stage of seeking or wandering. If they're in that stage, they don't want to be told what to do. People in the orphan stage want to be given very clear structure, very rigid kind of information about do this, then do this, then do this here. People in the wandering stage, if you try to work that structure with them, they'll say the hell with you. I want to find out what my own truth is. I want to find out what my own choices are. So the more you try to provide them structure, the more they will rebel against structure.

Even though you're working with the same child or client, their needs may change over a period of time, and the approach that worked extremely well with this child initially, or with this individual initially, may not work well with that same person in three months and in six months. Next slide, please.

The next stage of development is that of the martyr or the caretaker. If you think about Dorothy in her journey, when she encounters other people like the Tin Woodsman, or the Scarecrow, or the Cowardly Lion, what she does is try to take care of them, try to provide for them. Her response is, "You have this problem. You don't have a brain, you don't have a heart, you have no courage. Come with me to my big, powerful surrogate parent figure, the Wizard of Oz, then he will cure you or he will help you in the way that he's going to help me. So I will try to protect you."

Also, if you think about Dorothy, when she stands up to the Cowardly Lion—she doesn't realize it's the Cowardly Lion yet-she's first very frightened by the lion. What changes her so that she confronts the lion? (*People respond*) Because it scared the little dog, it tried to attack Toto. At that point, she picks up her dog and she slaps the Cowardly Lion across the nose, and then he starts crying. But it's the idea that for a lot of people in these particular positions, they can't do it for themselves. They can only take their power or their energy, if they're doing it on behalf of somebody else.

One of the things that I've found to be very effective, in working with some of the kids that you may come into contact with, is not to do it in a direct line, in the sense of, "You need to take your own power." But asking those kids, "What would you do in terms of working with kids who are in your similar situation. You be a resource for me. You allow me to help you by helping others," or "You probably won't do this for yourself, but very much like Dorothy, in the sense of 'I won't protect myself, but I will protect somebody else.'" It's the caretaking role.

Now, the reality is that some women, in the general American culture, get caught in this mode, believing it to be the only way that they can be a hero. That the only way that they can deal with problems is by helping other people, but not really concentrating on meeting their own needs. A lot of women, by the way, are taught not to become wanderers or seekers until they've had a family and they've raised a family. Only then can they discover what their own power or strengths or resources are. Males, in American culture, tend to be told to be wanderers or seekers at a much earlier stage in life. So even though people go through all the basic stages, people tend to go through it at different times in their development. Next slide, please.

This is hero as warrior, and a lot of people think that this is the only way that a person can be a hero. Warriors are almost always associated with little princesses, and the little princess represents someone in the orphan stage. If I'm a princess saying, "Rescue me, save me, help me, fight off the dragon," it's because I can't do it myself. I need the big, powerful person over here to do it for me.

People who are in the warrior stage, and a lot of American men are socialized that this is the only way they can be a hero, are taught the idea that I will tell you what to do. I will tell you what you should think. I shall tell you how you should feel and how you should act, because that's what warriors do. They set the world up in terms of things being right or wrong.

Some people, particularly if they're in the orphan stage, want to hear that. Let me warn you that a lot of you, working in the caretaking roles, will find it very easy to think of yourselves as being warriors, of thinking that's the only option or only choice that you have. If that's the case, you are always having to slay the dragon, next slide, or the wicked witch in this particular case.

If you are a warrior, then you are always looking for the dragon to slay, or the witch to confront, with the idea that somewhere there must be an enemy out there. And a lot of the parents that you work with, or some of the students, or the children will also have this mentality. They think that there must be some kind of enemy out there that's out to get me. And so I must always be on guard in order to protect myself.

The difficulty with this is that it's not always the most useful way of thinking. A warrior thinks very much in terms of right or wrong. Also, if a warrior has learned to caretake, a warrior will defend other people. But there is a difference in the sense of dividing the world up into right or wrong. So I, as a warrior, will defend all the right people, and I will protect the right people against the wrong people. Is this starting to sound familiar? It's the idea that the right way is the way that I think, feel, or believe.

And the wrong way is the way that I don't think, feel, or believe. And if you don't think, act, or feel the way that I do, then what I should do is kill you so you don't contaminate the good people over here.

The next level of sophistication development is, okay, I can't kill you bad people over here, so what I will do is convert you so that you will learn to think, feel, believe and act the way that I know is the right way to feel, think, believe or act, the way that all these people over here do.

The next level of development is, okay, I can't kill you, I can't convert you, so I will legislate you out of existence. I will pass laws that make it illegal for you to think, act, feel or believe in any way that's different from the way that I think, act, feel or believe over here.

Obviously, this doesn't work in all cases. There's a story about Jerome the Frog. Jerome the Frog lives in a swamp. And it was a slow day in the swamp for Jerome. And he encounters this witch. Well, you know, it was a slow day for the witch, too. As a joke, the witch says, "I've used my magic powers to turn you into a handsome prince." She didn't do this, it was just a joke. But Jerome didn't realize this. And you don't mess around with witches, so Jerome hops into the closest village and tells everybody that he's now a handsome prince. All the village people look at Jerome and say, "But you look pretty much like a frog to us." And Jerome says, "No, a witch has me under a spell. I'm really a handsome prince."

The village people feel that you don't mess with witches, so they treated him like a handsome prince. And the wonderful thing about a self-fulfilling prophecy is, the more they treated him like a handsome prince, the more he behaved like a handsome prince. He's still small, green, and slimy, he still likes to eat flies, but other than that, he just acts more like a handsome prince.

Until finally one day, the village people come to him and say, "We want you to go kill a dragon." And Jerome says, "Why?" The village people reply, "Because that's what handsome princes do." Jerome says, "Yeah, you're right on that one. But why do you want me to kill this particular dragon?" They say, "Because it's burning down villages and we can't have that happen, so go kill it."

So Jerome takes his sword and hops to where the dragon is, dragging his sword behind him. This dragon looks down at this tiny, little green frog and says, "What do you want?" And Jerome says, "I'm here to kill you." And the dragon says, "Why?" And Jerome says, "Because I'm a handsome prince and that's what handsome princes do." The dragon says, "Well, you look like a small, little, green, slimy frog to me, but that's not the point. Why do you want to kill me?" Jerome tells him, "Because you're burning down villages." And the dragon says, "That's what dragons do. We love to burn things. It's one of our favorite things to do. It's even in our union contacts." And Jerome realizes that this is true. So he hops back to the village and he negotiates a settlement where on Tuesdays and Thursdays the dragon incinerates the town garbage.

Now, the morale of this story is that what Jerome did was stop thinking like a warrior. A warrior sees the world as only right or wrong. But Jerome got creative, in the sense that he took a behavior that was not acceptable, and then he changed the context of the behavior, so that it was okay. A lot of the kids that you work with, particularly if they're acting out or having difficulties with authorities and establishment, will often have very good qualities or skills, but they're using them in an inappropriate context. If you can provide leadership to a gang that does a lot of destruction, then the same kind of leadership skills can be applied somewhere else.

If I have a kid who's doing a lot of things in terms of graffiti or defacing walls, that's an artistic expression that I might be able to use in a different situation. I'm not taking away a behavior. I'm just changing the behavior's context, or the location or the timing of that behavior.

When you start working on that level, you're not thinking like a warrior anymore, you're thinking, instead, like the next slide. There are different ways of dealing with dragons. Like the story that I just told you, about Jerome the Frog, you don't always have to kill dragons. The other reality-next slide-is that some princes really like their dragons. They don't want them slain.

So Jerome moves into the area of being a shaman or a magician, like *The Wizard of Oz*, in the sense that he's able to see how things integrate. If you, as a caregiver, are at the point of being a shaman where you see things integrating, then you see that people might actually learn from their experience. People, whether they're the family, or whether they're the child in the orphan stage, are not comforted by you saying, "This will all work out, or there's something that you are learning from this, or that this is something that will help you in a later stage in life." Someone in the orphan stage doesn't want to hear that. It does not comfort them. Next slide.

This is a slide that shows a spider woman, and the web is often shown as a symbol of connectedness, of how all these things blend together. Everything is part of something larger. We get the sense that everything is touching on everything else. And this is very much a part of traditional American Indian teaching in terms of an idea of harmony or unity. But a lot of kids that you are going to be working with are not at the stage of development where they are really able to accept that.

Different families and different children are going to be at different stages of their development. They may change in their development in the process of your working with them. This is why some kids respond well to some clinicians, or to some social workers who have a certain style, and it matches where that family or where that individual is at that particular moment in time. This is why we need a variety of different workers who have different styles and different approaches, different ages, different genders, and different ethnicities to be able to meet the different kinds of needs that are there.

Also, what I was mentioning to you before about being non-Indian, there was a thing with Indian Health Services in Phoenix, with a psychiatrist I have a lot of respect for named Bob Bergman. Bob Bergman is this nice Jewish man from New York, a physician and psychiatrist who came out to Arizona and went Native. He just went pretty bonkers in the sense of converting, where he fell in love with Navajo culture, joined the American Indian church, was instrumental in terms of inviting traditional healers in to work with people in the hospital. He set up scholarship funds through Indian Health Services for Indian kids to be apprenticed to medicine people in the same way that you get stipends to go away to medical school. All these different changes.

At the same time he was hired, they hired this other psychiatrist who did nothing in terms of recognizing cultural differences. He didn't treat patients any differently than he would have if he were in Cincinnati, Ohio. You know, what is interesting is that the evaluations that were done on both those psychiatrists, they were both equally effective. Even though you'll hear us really pushing the idea of incorporating American Indian traditions and culture, there are some Indian people who don't want that. There are some Indian people who are specifically going to the Indian services and hospitals to not have to go to traditional healers, to not be involved in the cultural context.

So it's a bell-shaped curve. And this is why, again, for those of you who are non-Indians, there are some families who specifically want that and will be comforted by it. It doesn't mean they'll be in that stage of development all the time, but for certain families, that's precisely what they need. The fact that I'm American Indian may mean that they will not relate to me in a way that will establish rapport initially. Next slide.

Back to the ending of *The Wizard of Oz*, Dorothy comes back after having become a person of power. Remember at the very end of the movie where Glenda appears to her again? And Dorothy still wants to go home. Do you remember what Glenda's response is to her?

Woman: She had the power all along.

Terry Tafoya: You had the power all along. This is very important for you to realize. That for the children you're working with, and for the families that you're working with, even though you see that they have the power all along, they won't believe in it themselves. When Dorothy is told this by Glenda the Good Witch of the North, if you were Dorothy, wouldn't your response have been, "You mean I spent the last goddamn seventy-five minutes of this movie being chased by these stinking flying monkeys, and all these problems, and I could have gone home all along?"

And the answer from Glenda was, "You wouldn't have believed it if I had told you. You weren't ready to accept the idea that you had the power all along." So, you did have the power all along, and all you had to do was what? Click your heels together three times. Next slide, please.

This is the symbol of the ruby slippers. A lot of the families and children that you're working with won't believe this when you first start working with them, that they had the power all along. This is where you get to the point of frustration and burnout because you see the potential for these people, because you realize what they could accomplish. But until they are ready to believe in their own power, it doesn't do you any good to keep yelling at them that they have power. The more you yell at them, it's like trying to tell a seed to grow, grow faster. And you know, it's not going to grow any faster, no matter how loud you yell at it.

I think I'll stop showing the slides because it's almost time for you to go. Good luck in the work that you do. It's a real challenge. Are there any questions? Yes, sir.

Man: We live in such a dysfunctional society anyway. If you look at it this way in a non-Indian way, we have a physician over here that will treat us for our physical ailments. If we have physical problems or a physical need, we go to the doctor or physician. And if we have a spiritual need, something spiritual, religious, finding that way, they go to their churches and their pastors and reverends for that kind of guidance. And they get their souls pure to go out and seek the physical environment, Mother Earth, and they go out and ski and play and do that kind of thing. Whereas for the Indian cultures, at least where I'm from, all that was done by one person, the medicine man, the shaman. That person serves all those roles and they are all interconnected. I guess the next scenario, that some of our families, that Indian people go through, is if they don't have that one person to go to, then they go outside the tribal society. And some of this has been broken down through the assimilation of all these things and of us Indians for five-hundred years, this creates a real dysfunctional situation for our young people right now.

Terry Tafoya: I think it's important. The other issue that I find is a lot of young people are eager to learn new things, but they haven't been taught the process. They may come to an elder or to a medicine person who will tell them a legend, and they don't understand that it is part of the teaching process because they've been trained by the schools that there must be ten easy lessons, or that there must be a textbook answer, or that there is a summary at the end of the story. You know, the moral of this story is.

So sometimes, even when the access is there, the kids don't always know how to use that access. They don't see what their relationship is. And they also don't see their own responsibility to it. Within traditional American Indian societies, there was always a role for everybody to do something, even if it was to sing along with somebody or to dance with somebody. In general American culture, it's real easy if you're a child to only be an audience, that is the only role or function that you have.

Even within white cultures, there was a situation, in an older time, that you did something in terms of watching an adult do something, and then you played at doing that. In other words, whether you're an American Indian or an European, you watch a person be a farmer, you watch a person doing basket making, you watch somebody milking, and so, you see that you can do that yourself.

For contemporary society, if parents are systems analysts or stock brokers, a child doesn't know how to play at doing that because it's so abstract. There's no longer any modeling in terms of how to be a really functional adult, and that's another problem that some of our kids are going through. I'm sorry, we're running out of time. Yes, there's a question.

Woman: Do you understand singing as a means of coping?

Terry Tafoya: I think it's very important. One of the things that singing does, if you're working together as a group, is that singing forces you to breathe in exactly the same way. There is also the teaching that singing together allows you to become of one mind. So whether you're doing it for gambling—For example, our gambling songs and our healing songs are really the same songs, because our belief system is that if you're a medicine person, you're betting your life against the life of the patient. That the power you have to heal is greater than the power of the disease to kill. So the singing is a way of joining forces to operate so that your energy blends in with the energy of the healer and with the patient.

There are also differences in terms of the physiology, that if you learn to breathe in certain ways, to breathe deeply, for example, it will change your mental state. And I think that's very much one of the things that takes place with singing, that we don't think about it in terms of what it does.

There's a lot of music therapy work done in Turkey. They study the ability to hear things and the study of certain pattern changes within your mind. I'm sure that's all an element of what group singing is.

And finally, on a religious or spiritual level, there is something beyond just the physical changes that, to me, takes place. There's a difference if you're singing a cleansing song or a soul recovery song, than if you're singing a blessing song. That something else is happening there in terms of the rate of change.

There is also research that has been done out of Canada that works with drums. If you have a beat of five to seven beats per second, then it tends to bring about altered states of consciousness. So in terms of meditation or in terms of hypnotic work, the singing and the drumming seem to have a very strong effect.

Also, if you've ever been in the Pacific Northwest where the people do winter spirit dancing, you'll be in a long house or a smoke house where people surround you, and there might be thirty drums all coming at you at once, like the one that I was using, all singing your particular song that gives you strength and power. And regardless of the power of the song itself, the idea that people in your community care about you, that people in your community are wanting to do something for you, that has an incredible impact in terms of your well-being anyway. Not just the singing, but the context of the singing is very important.

WORKSHOP 3

Indian Child Adoptions

(Thursday, January 16, 1992)

Facilitator: Janie Braden, *Three Feathers Association*, Rose Margaret Orrantia, William Salinas, *Co-Presenters*

(Due to audio difficulties this transcription begins with the work shop already in session.)

Woman: It sounds like there's a difference in what Public Law 280 states. Do the county courts have the power to interpret the Indian Child Welfare Act (ICWA) as they want? I'm confused as to how different states follow the ICWA in relation to whether they are Public Law 280 or non-Public Law 280.

Man: The ICWA covers all Indian people regardless of where you're at. The problem we get into in our state is that they interpret it the way they want to interpret it.

Woman: So I guess that's my question. If you are a Public Law 280 state, you have the power to interpret it the way you want, versus if you're not a Public Law 280 state then you have your own court system.

Man: For non-Public Law 280 states, you do have your own court systems. Okay. And they have their process they go through. In California or any Public Law 280 state, you relinquish that. You gave that up when you went to a Public Law 280 state and you allowed the states and the courts to do that for you. So in a sense, the tribes do have input. They can intervene. They can make recommendations. But that does not mean that the courts will do that. They will look at it and if they feel that what the tribe is trying to do is reasonable, they'll go along with it. If they don't, they don't. That's why we have some of these suits that we have here in California because the courts decided that they weren't going to rely on what the tribes wanted.

Man: Two comments. One is on adoptions, how well informed are the private adoption agencies about the ICWA?

Man: We haven't even touched that matter yet. We've hit some of the minority adoption programs but some of these others, no, we haven't even addressed that issue.

Man: As far as Public Law 280 is concerned, what about states that do not have any federal or state recognized tribes at all? Do they fall on the Public Law 280 side or the non-Public Law 280 side? For instance, there are actually no tribes in the state of Ohio.

Woman: Well I think what happens in those situations is, that those states are so unfamiliar with the ICWA because they have never dealt with it before, that they just treat it as another case.

Man: So now what we're in the process of doing is this, we've been operating a program here for about ten years. And now, we have finally signed an agreement with the state.

Woman: And they're usually willing to comply. Really. They want to and I do seriously believe they try. I just think that they don't know the law and the correct procedures.

Man: A lot of it is a lack of knowledge.

Woman: Yes, it's a lack of knowledge. The majority of it is that the information is just not available to them, and they're so busy anyway. They really don't have time to go out and educate themselves, and everybody else on their staff, about what to do in cases involving the placement of Indian children.

Man: There are hand books in all the counties. They have the ICWA in the handbooks.

Woman: They probably have handbooks in every state in the country. I hope that they do. But I wanted to say one thing about the private adoption agencies. We have been getting a lot of calls from private adoption agencies. At least they're familiar with the ICWA. That's one thing I was impressed by. But what they want to do is this, when a birth mother comes in to say she wants to relinquish custody, then they want us to find them a family, one with all of these real all-American family qualifications and criteria. Then that family has to pay $10,000 for the home study, $30,000 when the child is born and then another $10,000 to the mother. And these agencies don't understand that Indian families are not going to buy a child. I don't care—I don't mean to put it that way but a lot of them, if they have the money, are not willing to pay it. I really think that the agencies that I have dealt with so far are somewhat familiar with the ICWA. Well, because for most of them, I guess, the majority of their cases involve voluntary relinquishment. And so the birth mother goes to them because they want this to be confidential and so they assume that the tribe doesn't have to be contacted. Well, that's not right. I mean she wants it to be confidential but the tribe still has to be contacted. And they don't understand that the tribe can also intervene even though they've put out all this money for the birth mother's transportation and living expenses. I don't know whether the tribe's responsible for that or not. I wouldn't assume so. And so the private adoption agencies get real confused, so they're real territorial about who they want to contact and if they should contact the tribe or not.

Woman: That happened to me on a recent case. This young girl lived in a larger city and she had a child. And first we needed to establish if it was an Indian child under the ICWA and thus go through all the steps of trying to find an appropriate extended family member. Well, this girl wanted to keep it really confidential but yet it was my job to establish, first and foremost, if it was an Indian child and then from there to take steps to contact an extended family member. So I was starting to hit a brick wall with the county people, especially with my counterpart because he says, Well, this girl wants to keep it confidential. I said Well, yes, I understand that but this is my job and it's my job to make sure that they're contacted. So what can you do in a situation such as this?

Woman: Well, I've always struggled with that too. Because you can lose personal rights. I mean in that situation, I think that a birth mother sometimes loses their personal right because the tribal right supersedes hers. And I don't know what's right or not, the tribe or the child. It's kind of a struggle really.

Woman: Well, I just went ahead and then as quietly as possible made the notifications. In the end, she kept the child. I decided that as much as she wanted to keep it confidential, it was my job to go ahead and insure compliance.

Woman: That's right, yes.

Woman: And sometimes you can catch flack with the county. They like to use that.

Woman: They don't always understand.

Man: According to the requirements, the BIA has to be notified as well as the tribe and all you can tell them is that hopefully this will happen. There's no guarantee. And there's no guarantee when it goes to the tribe that it's going to be kept confidential, so all you can say is, this is what we're required to do. We'll indicate on it that the mother requests it be confidential and just hope that it happens that way. If it doesn't, then at least they were apprised of that situation. The BIA does the same thing. They have to send the notice to the tribe. And obviously in most cases, unfortunately, it's not going to be confidential.

Woman: But that's just like anything else within a tribal system. I many of the tribes are so small that my sister, cousin or neighbor may work for the child welfare. I mean, that's just kind of the way tribal systems are.

Woman: I just wanted to comment on that. We don't have a problem with confidentiality because of two things that we've done. One is, we have our enrollment and trust department. In our enrollment and trust department, we've found that whenever you get into the areas of membership and the rolls, in order to have a federal office, you have to have a confidential office.

Woman: Certainly.

Woman: My department, which is the enrollment department, can do adoption searches. We have confidentiality policies in place and we've made it public knowledge that it is confidential. So what happens then is that I also sit on the ICWA Department. So most of those cases overlap in my department, but we also have a confidentiality policy. And one of the things that we've sincerely worked hard to insure is credibility with our enrollment departments. I don't think that it's an excuse to say, Well, that's tribal business. To me, that's not acceptable because people have a right to confidentiality.

Woman: Well, I'm not saying that no one has confidentiality policies, but all too often, because of friends or relatives having access to private information, these confidentialities are not kept.

Woman: I hear comments all the time that you can't insure confidentiality and I don't think that's true. I think that with the confidentiality policy, you'll give them the message that we've tried. It's not easy, we're going to be confidential because we don't have the rights to the information. We do a lot of P.R. and we do a lot of work—so you eventually do get to a level of confidentiality that you need—in order to insure that the men are protected on the issue of paternity and that the mothers are protected in cases of adoptions. But the records are there for the tribe.

Woman: Yes. I think that more confidentiality is actually observed than people really think, but it's hard because of the nature of tribal systems.

Man: I think the problem is that the tribal councils change and policy changes are constant. You have a good thing going and all that, but down the line that might change because of the new council's views on it. These are the politics that involve everyone.

Woman: One more comment. We've separated our enrollment department from the tribal council. We have an enrollment committee that answers to our general tribal council which is membership based. Then we have the business committee which are the elected governing people. So our enrollment department is separate from the politics. No one's going to come in to my office and say, I want to see the records. They have no authority over us. You kind of have to be insulated when you have those kinds of records.

Man: Is that through your constitution or how is that developed?

Woman: Well, the constitution establishes membership, but then we have an all membership ordinance that establishes the authority of our enrollment committee. So, to answer your question, through ordinance.

Woman: Determining who is eligible for tribal membership is another issue which always comes up. Each tribe has their own specific requirements. The most common determinant is a quarter degree blood dependent upon both the mother and the dad put together. Now this isn't true of all tribes. Some tribal memberships are real complicated but most of them aren't. It's generally pretty simple. But there isn't a list just stating the requirements for every tribe. Now, you can contact the Bureau of Indian Affairs and they can give that information to you. I'm sure that they have most of the tribe's requirements. They can give you the enrollment criteria for a specific tribe.

Man: So, once that's done and you are in contact with the tribe, the tribe says, This person is not eligible or not enrolled. Then your obligation and duty is done.

Woman: I've had several states where, whether the child is eligible for enrollment or not, if he has some sort of Indian blood in him but not enough to be enrolled, they will still follow the ICWA because they believe strongly enough in the cultural traditions of the tribe. A lot of private agencies do this also.

Man: They might consider the child to be a member of the community. The child might not be related to anyone, but he is there and they consider him a member of their community.

Woman: A significant contact basically.

Woman: Are any of your caseworkers or judges in any of the tribes that are here? Do they get trained in how to use the manual and what's in the manual? Up in Washington State, we have a two day training session for all caseworkers and judges on how to use the manual and what's in the manual. We may only have one case, but that one case is extremely important.

Woman: Are you talking to state judges or tribal?

Woman: We've had state judges there also.

Woman: Okay.

Woman: Spokane county judges have been through this training primarily because they want to know what it is. And the training takes two six hour days.

Man: I think I mentioned before, we do have training on the ICWA and also on cultural awareness here in the Southern California for the social workers, the court personnel and the judges. The only problem is that with the department of social services, the turnover is so great that you're have to do training over and over and over again. It's very costly so you don't do it as often as you would like to. And in the counties, it is difficult to find facilities but we then get someone in like Judge Thorne. We use him quite a bit. Although it's costly to have him come down, we recognize that he is needed because of his knowledge and experience. The judges, the court personnel and the people that deal with Indian children need to hear about ICWA and be aware of what's going on.

Woman: Another question is about adoptions. Do you have any open adoptions where the parents, maybe the mother and father, still say involved even though the child has been adopted by somebody else?

Man: We've had some. We've barely just started so we really haven't seen either the repercussions or the results of placement. Currently, everyone is talking about open adoptions though.

Woman: I've done several in the last ten years. For instance, I was working for a tribe at the time, and a mother actually picked a placement family and said, This is what I want to do. The family said, Fine. We'll be glad to take the child. And they all lived in the same community.

Woman: I have a family who adopted my two children seven years ago and it's an open adoption. I've found the kids adjust a lot better, my son especially. My daughter wasn't old enough to really know who she was. But my son still wants us to come around so we do go to see him. The open adoption makes him feel more secure in his life.

Woman: Well, yes. It's kind of like the Indian community system. I mean, I'm all for them if everybody's in agreement to what open adoption means. There has to be a very clear understanding. I was really surprised by the fact that they were real open with the placement. They just said, Well, if that's what it takes.

Man: When you're doing your home studies, these are things that you talk about. Find out where they're coming from because in all cases, open adoption might not be good for everybody. So you have to look at these people and, here again, you're matching the children.

Woman: If you're going to place these people in a small community like that, I think you'd have more open adoptions than you do.

Man: You'll find in the smaller Indian communities that if you do an adoption, the community is so small that everybody knows the child and they know their parents and it's not even a problem. But it's usually a guardianship more than anything else in most instances.

Woman: You said something about forms to the BIA. What kind of forms do you send the BIA?

Man: It's Form 1143, I believe that's what it's called. I don't know if it's the same for every other state.

Woman: No, I don't think it is.

Man: It's the form where you identify the child and their situation and then it's sent on to the BIA.

Woman: The tribes take it back over to social services. So they work with the bureau of social services but that's pretty much the extent of it.

Woman: Yes. I would recommend that you contact the specific tribe that you're looking for. Is that what you're asking me?

Woman: It's important to note that sometimes the tribes live in different areas. For example, with the Cherokee, they may be in one of several different states.

Woman: Does each reservation have it's own enrollment?

Woman: Yes. But there are two Cherokees. There's Eastern Cherokee and then there's Oklahoma Cherokee. So maybe that's what you're asking. I don't really understand.

Woman: And they each have their own enrollment?

Woman: Yes.

Man: And those are the only federally recognized groups? Because there are some other Indian or Cherokee bands in the south.

Man: Well, there's even a California Cherokee band.

Woman: Well, I would find out exactly which tribe it is that the birth parent is from. Cherokee is very different, especially Oklahoma Cherokee because all you have to be is a descendent and therefore, that makes you eligible for enrollment. That is, on the roll before or during the Dawes Act or whatever. I have one of the rolls. If you want to contact me I can send you a listing of the tribes and the addresses and phone numbers. There's also a book out there that has all the tribes listed, or you can call the Bureau of Indian Affairs. They usually give the phone number and the name of the person to contact.

Woman: Can we contact different tribes about kids that we know are Indian but are unsure about what tribe they come from?

Woman: Yes, however it takes a lot of time. It takes a long time to track such information down and so we'll kind of keep on it until we can't go any further.

Woman: And usually the more you work with them, the more clues you get as to what tribe the child really belongs to. I've had state workers call me on Monday and run three kids by me and say, Guess what tribe these kids are? And I'm going, I don't know. You can't tell by looking at them most of the time. You just handle them as an Indian child and attempt to find out what tribe they belong to.

Man: Most agencies do that. We do the same thing. If they say that they're Indian, then we handle them as an Indian case and we try to track the tribe down. And the ones we can't track down, then the child goes back to the county.

Woman: But it's easier to just go ahead and take the precautions initially outlined in the ICWA than it is two years down the line to say, I didn't even ask if this child was Indian. Then you have to start all over and that's when a lot of people get hurt, like the foster families, the adoptive families and especially, the children.

Man: We had a question about the establishment of a registry or a directory of people interested in adoption. I believe that a registry is in the process. Some people recently came to our office and we gave them information as to going about doing this. How long it's going to take them to get their license, I don't know. So it might be sixth months or up to a year before a directory is established.

Woman: But as of right now, there isn't a directory.

Woman: But they would be a good contact for just families interested in adoption, or does that include foster families?

Woman: I think they do keep a register of foster families who are interested in adopting.

Woman: I think they do, too. Yes. It would be a good contact for an urban area. Because in urban areas, there are sometimes more difficulties involved in finding Indian families, unless there's an urban Indian center.

WORKSHOP 4

Developing Tribal Courts

(Thursday, January 16, 1992)

Facilitators: Hon. William Thorne, Gene Madrigal, Abby Abinanti, LeRoy Wilder

Hon. William Thorne: The rational of using tribal courts to handle child welfare matters is that the judge makes the decision, understands more about the community, understands more about the family dynamics, and understands how the kids grow up in Indian communities. You don't have to educate the judges the way you do in state courts. Then, you have to start from scratch, teach them about Indian communities, about Indian families and then try and get them to set aside their own life-styles in order to make decisions according to the tribal norms. The other benefit of having tribal courts make these kinds of decisions is that the procedures are often more informal in tribal courts. Families can come in and represent themselves, and often times, you don't need to pay $150 an hour for an attorney. A lot of tribal courts have advocate systems in place where there is professional help available, or people can come in on their own and state their position, understand the process. It's a lot less alien. It's a lot less fearful than walking into a state court. In Utah, the division of family services and youth corrections all make services available to the tribal court, just like they would in the state court. It is based on the idea that they're going to have to provide services anyway, but the tribal court is closer to where the problem is. The tribal courts are closer to the families, closer to a solution, or cure, or fix for those families. Tribal courts are better able to deal with those families. The state will then go ahead and provide the service, based or whatever the tribal court orders.

Under the Indian Child Welfare Act (ICWA), you can have a tribal court with tribal people making those decisions. The other option is to have an administrative body make the decision. And that means you don't have to have a formalized court system, the kind that you're used to seeing on TV in "L.A. Law" or that you walk into in a town. Or where you walk in and you see a full time judge and staff going. That's not necessary under the ICWA. You can set up a system so that it is an administrative body. It may be one person, it may be three or five people who sit and hear the case and make a decision. And they do it on a part-time basis. They do it just as is necessary to handle the case. There is another kind of option. In a large community, you may have a full time court. You may have the population base to justify a full-time court. I know in California, most of the reservations are so small that you just cannot justify a full time court. So an administrative body may be something to consider, where you develop some training and some expertise. The person who makes the decision, you may even want to rotate or share or make a circuit system so that that expertise is shared among a number of communities. One of the worries of small communities is that it is hard to find people who are not affected family-wise by decisions. There is a special problem, if you have two tribal members in a dispute over a child, in a small community. In a small community, people are related to basically everybody on that reservation. It's going to be hard to find somebody who's independent. So there's an advantage, then, to a circuit system where you bring in somebody else from a similar background or a neighboring rancheria or reservation who then can make that decision. And you build that into a formal system so that when cases come up in the state's court, they can be transferred to a tribal court. The ICWA provides for that transfer. I've done a number of those cases as what's called a pro tem judge, a judge for just that case, where the state transfers the case to a tribe, and the tribe then needs somebody to handle it. Again, if you have a system set up that rotates, you have the expertise already in-house to do it or you can bring somebody from the outside in to make that decision.

Abby Abinanti: I just want to say a few words about the other issue that comes up in Indian Country when we start talking about courts which is, I think a lot of us sit and we think, "Well, are we really confident we can have a court system? Now, do we have enough people who can act as judges? Do we have enough people who can act as attorneys? Do we have the professionals that can truly staff these institutions?" These are worthwhile questions to consider, but when you're looking at something like a tribal court system for a particular area, I think it's important to realize that you can get specialized training, that you can get people who are from the local community who can run these institutions.

One thing that will help you develop a level of confidence about competence, is to examine juvenile courts in the counties where you come from. I have worked in several counties for over several years and appeared in, I don't know how many different court systems, worked with I don't know how many different social workers, judges and lawyers and I have seen a level of competency that would frighten people if they actually were very involved in the process.

It's a very startling thing to realize that most of the people who end up in dependency court are poor people. They are minorities. In San Francisco, I'm in court almost every day. It is a unique situation when we see a White person in dependency court. Does that mean they never abuse or neglect their children? No, it means they never end up in court. This is a poor people's court. Whenever you have poor people involved in a system, you have less resources poured into it. So you're already dealing with something that really is like the stepchild of the system. You don't see, for the most part, your best lawyers. You don't see your best judges. In San Francisco, until a woman ran and won an election recently, it was always a fight to determine who was going to be assigned to juvenile court because everybody hated it. It was like the Siberia of the court system. The building is old. The court calendars are crowded and it was thought to be the least respected bench that you could sit on. And when you have that type of attitude you can imagine the level of practice in that court. So that when you're talking about, "Okay, we may not be able to set up an ideal court system," you have to really think of what we have to compare it to and what we're subjecting our people to when they go into these court systems. They get very little respect as a human being from the system. Not just our people, but most of the people, like I said, are poor people and they go in there and they are not designed to be compassionate. They're not designed to explain to the people what's going on.

There are so many times that I come out of court with a client, and the client will go what happened? What happened? And you go, (*guffaw*) you were just in there. What do you mean, what happened? Because they don't understand the way the people talk. They don't understand the formal language. The judges don't take the time to explain to them what happened. They're frightened, so they have no idea what's going on. And so they walk out of that courtroom, and they may have just lost their children, but they're not absolutely sure whether they have or they haven't. It's not because they're not paying attention. It's because of the way the system is set up, they can't hear it. They don't talk to the people like you would talk to them. Even if you don't know the magic words to do this one hearing, you could sit and you could talk to somebody you've known all your life, and explain to them what's going on.

Hon. William Thorne: Explain why you're making the decision, and why and what they can do about it.

Abby Abinanti: That's a major difference. And a major reason to consider having your own court system, because maybe we don't have the level of competency, but we do have a level of respect for our own people that they're not going to get some place else. I also want to say that the competency that's out there is really not that great.

Hon. William Thorne: You can learn everything you need to know. There are places to learn it: conferences, special training sessions for juvenile judges. There are programs that can give you whatever you need in expertise. As Abby said, you possess the necessary care and concern for the Indian communities that those kids, often times, don't find anyplace else.

Abby Abinanti: No, we used to joke around about advocates versus lawyers. Now as an advocate, can an advocate really practice against a lawyer?

Hon. William Thorne: An advocate is somebody who is not a lawyer, but who has the skills, who's taught, or who has experience to handle a case just like a lawyer would. The difference, the advocate has not been through law school.

Abby Abinanti: Most advocates, I have to say, are self-taught; at least the ones that I've seen are. It's just now beginning to be a process where people can learn how to be advocates. Where I'm from, when I was still involved with the court of Indian defenses, we were doing fishing court offenses. And we used to love to see Susie Long whip these lawyers. Susie Long was a secretary in the California Legal Services for years. Then, she decided she was going to be an advocate. She used to regularly clean their clocks because she was committed to what she was doing. She understood it. She read the regulations. It was important to her. It was important for her to get it done right, and she could run circles around them from day one. And it was always like that.

I've appeared, and I think most of us have, in the tribal courts, where we have seen advocates, who are truly committed, just really stomp lawyers. It is not that much of a magical process. Once you've sort of seen it, and observed it, you can learn it. Particularly for us, because we have a strong oral tradition. So we can see things, and we can learn from watching other people do it. We can sit in a court room and watch things happen and then go, "Well, that wasn't so bad. If Abby can do that, I can do that. Susie can do it. It can happen."

Hon. William Thorne: Some of the things I did as a judge, and have subsequently taught to some of my colleagues on the state court bench, I learned through tribal judges, older people who had no legal training but knew people. They knew how to deal with people respectfully, and yet get done what had to be done. So, as Abby said, there's no magic to a law degree. The commitment is important, and we can learn the rest. Often times, you don't have to learn that in a legal setting. There are other ways to learn it, too.

Abby Abinanti: So just think about that. I want you to hold that in your mind, because there will be many times when you're thinking about the process of whether you should have a court or not when people say, "Well, you don't have enough qualified people to staff it." I think you have to really think about what we mean by qualified? What do we mean by competent? Yes, I think you have to be able to read and write. I think that's important because you have to be able to write decisions. But those are skills that people can learn. The most important skill, in my mind, is to run a good court system. You have to care about the people, and you have to know about the people. So that's what makes the court system really run.

The rest of it is exactly what you get downtown. It's where you bring in the wrong people, and you're halfway through the case before anybody figures this out. It's where you get one lawyer on one day, and another lawyer the next day, and a third lawyer on the fourth appearance. Or you get a social welfare worker who doesn't even remember the kids, who maybe sees them once every six months-if they're lucky. Now, when you think about it that way, and you think, "Well, should we do this or should we do that? Should we stick with this system?" You're not talking about going from an ideal system to a rotten system. You're talking about going from a system that is really inadequate already. So just about anything that we do is going to be a marked improvement for our people.

Hon. William Thorne: And you don't have to give up what benefits there already are with the other system. All the tribal court workers and the state case workers appear and handle the cases in the tribal court, just like they do in the state court. The one difference is, they find that they have a judge up there who is listening and caring about the individual cases. It's not such a crushing work load that the judges are just trying to cycle numbers through. They have somebody who's listening, who cares about that child as an individual, and who can take the time and make the decision in this case. Someone who can learn whatever there is to learn about this family, and then help figure out what the problem is. So if we decide to do a tribal court, we don't have to give up what services the state already offers.

Abby Abinanti: Okay, let's talk a little bit now about the mechanics of what you would actually have to do if you were going to reassume jurisdiction in this area.

Leroy Wilder: Just because we are all California Indian attorneys doesn't mean we all agree. I don't disagree with anything that's been said, but I want to make a couple of points. The fact that you can bring sensitivity and caring into the courtroom is not necessarily all of the issue. First of all, I'd like to say that family welfare is the objective. Jurisdiction is not the objective. If you're making a decision to establish a tribal court because of tribal sovereignty issues and for the expansion of jurisdiction, I think that stands it on its head. I think you want to make the decision because you can improve the system and you can do a better job. And there's some hard questions and some hard issues with respect to that.

Number two, if you decide to set up your own tribal court, I think it's really important that you not sever the relationship with the state. Whatever you do, as Judge Thorne just pointed out, you do in conjunction with the state. Because no matter how you slice it, the chances are almost nonexistent that you will have sufficient resources to really provide the services and take care of those families. And I mean the mechanical, monetary resources. Not the caring and emotional kind of resources. Those will probably be there and be there in abundancy. So when you make the decision to establish a tribal court, there's a real practical side to it, too. And I think you need to look at that carefully.

First of all, let me talk a little bit about jurisdiction. For those of you in non-Public Law 280 states, there's no question that within the boundaries of your reservations, you have exclusive jurisdiction with respect to the ICWA, it's not a question. But in Public Law 280 states and in, for example, New York, under 25 U.S.C., I think it's Section 237, that is New York's Public Law 280 statute-the state does have some civil authority within the boundaries of Indian Country, within the reservations, etcetera. That's kind of a fluid power. The Supreme Court, every time it visits an issue with respect to Public Law 280 jurisdiction, the fluid kind of changes position. And they're not real sure at any given time exactly what Public Law 280 means. But you can safely say that the state has some civil authority within the boundaries of your reservation with respect to these family welfare cases.

So the issue is now, if we want to reassume jurisdiction, what are we talking about? I interpret the act to say that what you're trying to do is reassume exclusive jurisdiction over cases that take place within Indian Country. This means the state has no authority, but that you already have concurrent authority. In other words, you could set up a tribal court and operate it without any reassumption petition filed through the process that I will talk about here in a minute. And your court would have authority over those cases that are filed, etcetera, and the state court would be required, under the full faith and credit provision of the ICWA, to recognize those state court orders-provided, of course, that under the Act, your court must recognize and give full faith and credit to the state court orders as well. So there has to be that reciprocity. That's how I think the Act was meant to be and that's what I think the law is. That doesn't necessarily mean that that's the way it is.

I know in Alaska, the Supreme Court of the State of Alaska has issued an opinion which says that tribes in the state have no jurisdiction, no concurrent authority under Public Law 280 unless the reassumption petition is filed and approved. Which leads to the question, "Well, if we don't have any jurisdiction now, do we really want to have exclusive jurisdiction, or do we want to have concurrent authority so that the state courts still have jurisdiction for certain purposes?" Those are rather complex legal questions that I'm not going to give you any answer to today, but I do suggest that they have to be thought out. You have to decide at the outset what kind of jurisdiction you want, be it exclusive or concurrent, and how do you arrive at that?

I have filed a petition to establish concurrent authority for the Metlakatla Indian community in Alaska. The regulations don't really provide for that, but I just did it because that's what we want, concurrent authority, not exclusive authority. That petition has now been pending for three years. The other practical side to this is, that the Bureau of Indian Affairs is somewhat dysfunctional when it comes to all of this and can't get them to rule on the doggone petition. It's not complex. They've agreed that it's gone to the solicitor, and they agree it does all the things it's supposed to do, but I still can't get him to rule on it. So you may decide that you want to petition for exclusive authority and you may be five years away from a Bureau of Indian Affairs decision. I can't tell you how to fight that. But one of the things that the regulations do, if you decide to go through the petitioning process, is they require you to take a look at the practical considerations involved in establishing your own court. It's a kind of guide, even if you decide that you have concurrent authority. If you're considering this, to establish a court, it might help to take a look at the regulations. The regulations are included in United States Code 25, Section 13.2; actually, the principle provision is Section 13.11 and all that follows. I'll just go through some of the things that are required in the petition according to these regulations.

Now, I'm kind of offended by some of the things they ask for and some of them I think are unfair. But you will have to deal with them if you put your petition together as you see fit. Nonetheless, they're there and there has to be some effort for compliance.

The first thing they want is your full name and address and all of that stuff, which is going to be on your letterhead, we hope, or you can just type it in. You then have to have a resolution from the governing body of the tribe. You just can't have a maverick family welfare committee that takes off and decides that it's going to apply. The tribe needs a resolution, and if you're going to put together a consortium, which we'll talk a little bit about later, there needs to be a resolution from each tribe. The proposed day at which the jurisdiction would be reassumed, that's sort of self-explanatory. You can put a date on there but I'll guarantee you, the BIA won't have your petition ruled on in time. So that's kind of interesting.

Next, you need to put the total number of members in the petitioning tribe or tribes, together with an explanation of how the number was estimated. That's an unfair one, I think. We all recognize that. But some tribes don't have very accurate roles and so, they rely on the Bureau of Indian Affairs. And that estimate is not necessarily accurate either but they want that in there. What I did in one petition that I filed is, I just made up the numbers. What the heck? If they want numbers, give them numbers. Now, explanation of a procedure by which a participant in an Indian child custody preceding may determine whether a particular individual is a member of a petitioning tribe. The BIA will always tell you that you've got to decide whether someone is a member or nonmember of the tribe. I say this every time. Don't ever let the BIA tell you that it decides who is and who is not a member of an individual tribe. That is a tribal decision and so what they want is an explanation of that process. That may be complex to do if you don't have a valid tribal roll. It may be the kind of thing where, you'll sit down and just have your family welfare committee decide whether that person is a member or a nonmember of the tribe. Don't hesitate

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to do that, either. There's some case law that you can rely on, I think, in these cases which distinguishes enrollment and membership; it says membership and the access membership. Remember, that language was chosen very intentionally to acknowledge as a member of a tribe someone who is considered by that community to be a member.

Enrollment is another matter. That's a term related to a legal status. For example, to be an enrolled member of the Seneca Nation, I'm sure all of you have examples of this, you have to trace your ancestors through your maternal side because that's a matrilineal society. But in a family welfare case, that doesn't mean that someone who traces their Indian ancestry through the paternal side is not a member of that community for purposes of the Act. So don't be intimidated by that. Citation to a provision in the tribal constitution or similar governing document, if any, that authorizes the tribal governing body to exercise jurisdiction. Some tribes don't have constitutions. Don't hesitate to say we're a sovereign entity. Our sovereignty antedates that of the United States. We don't have a constitution and we're proud of it. But we have this authority that's inherent. That will suffice. If you do have a constitution that's a standard old BIA Secretary of the Interior constitution developed back in the early IRA days, realize that it doesn't say much of anything, but there is going to be some provision in there that can be twisted into being your tribal authority because a tribal government interprets its own constitution. So if it says blah, blah, blah, cite that you interpret blah, blah, blah, to give you the authority to exercise this jurisdiction and don't blush when you do it.

Here is a description of the tribal court as defined in 25 U.S.C. Section 1903 (12). This is what Judge Thorne was referring to. The Act says that a tribal court is any court with the jurisdiction over these cases or any administrative body with jurisdiction. So you don't have to have some formal entity. You can say that our tribal court is our family welfare committee. Period. And then go to the Act. Go to subsection twelve of the definitions, and use the buzz words located in that section, in your own petition. Our standing welfare committee is our "administrative body with jurisdiction to hear these cases." And, no problem. I mean, the BIA may come back and question you. These are internal governmental decisions that you are making, and as far as I'm concerned, the BIA's got to accept what you tell them.

Now here's an interesting one. "The description shall include an organization chart and budget for the court." Well, your budget might be zero with an asterisk saying we hope to get a lot of money from the BIA as soon as it's established, but right now it's zero. I wouldn't worry about that. The source and amount of non-tribal funds that will be used to fund the court shall be identified. We've got a proposal in to ANA. We hope they fund it. Funds that will become available, only when the tribe reassumes jurisdiction, may be included. We anticipate that the BIA will provide us a $150,000 annually, once we've established this court. And on you go with your business.

A copy of any tribal ordinance, or tribal court rules, establishing procedures or rules for the exercise of jurisdiction over child custody matters. If you don't have any, what I would say is something to the effect that, "Historically our tribe does not have written rules regarding family welfare. But we've appointed people on our committee that understand the child rearing practices of our tribe and that's how we will conduct our business. A description of our child and family support services will be available to the tribe or tribes when jurisdiction is reassumed." Cite the BIA social services, cite the state social services, and of course, if you have your own, cite them. You have a social service structure. Even the smallest tribe has the extended family system of child caring and child rearing, etcetera, and that can be cited in there as well as any formalized code system—or whatever you may have. I'm not denouncing that, but I am saying that you have the authority, under the Act, to rely on your own traditional methods of handling these kinds of cases. The description shall include not only those resources of the tribe itself, but also any state or federal resources that will continue to be available after reassumption. That's one of the reasons why I think you need to, even if this elaborates state tribal agreement that's talked about and some tribes have, I don't see any reason why you couldn't enter into a one paragraph agreement with the county social service people that the services will continue to be provided. Include that as part of your reassumption petition. Next item, estimated number of child custody cases expected during a year, together with an explanation of how that number was estimated. That's a very difficult one, in many instances, because often your cases fall through the cracks in the state court system. One of the things you can say there is—use my system and give them a number. It's estimated. Say, "Well, I estimate 35, 78, 150, 5,406." That's your best estimate. You could also talk to the county people and see if you can get a real number.

Give a copy of any tribal agreements with state, or other tribes, or non-Indian local governments, relating to child custody matters. You don't have to have one, but as I said, it's kind of nice to have a little "we agree." The last petition I did with Metlakatla in Alaska, we had letters, both at the state level and at the local level, about a continued commitment to cooperation.

Going back to these services that are available, for example, the Indian Child Family Services here in southern California, the LA Indian Center, whatever; these are all resources that I think tribes in the area can cite as being available.

If the petition is for jurisdiction, other than transferral jurisdiction under 25 U.S.C. 1911 (b), that means, if you have a court you can get any case transferred to your court, have some good cause not to transfer the case. We're not talking about that. We're talking about Public Law 280. If you have a Public Law 280 state, or a similar statute, you need to include the following in your petition: a citation of the statute or statutes upon which the state bases its assertion of jurisdiction. For most of you it will be Public Law 280. New York people it's 25, U.S.C. Section 237, and there may be some others around here but I can't think of any right now. Give a clear and definite description of the territory over which jurisdiction will be reassumed, together with a statement of the size of the territory in square miles. For most of you, you can only identify that the reservation land is the area that you're talking about exclusive jurisdiction in. You may be filing this thing that says you only want concurrent jurisdiction and you may have language in there that relates to transfer jurisdiction, etcetera. That's one that you may need some legal help to put together. But for the most part, if you're talking about asserting exclusive jurisdiction, it can really only be over your trust reservation land. Some tribes have existing reservation boundaries, then they have ceded lands on which they have certain hunting and fishing rights within, or something, and they may try to assert exclusive jurisdiction within that territory, and I don't know, given the hundred and twenty some odd pieces of trust land in California, if anybody had that situation without a treaty-but for the most part you're not going to be able to assert exclusive jurisdiction over anything but your reservation land.

If the statute upon which the state bases its assertion of jurisdiction is a surplus land statute, then give a clear and definite description of the reservation boundaries that will be re-established for purposes of the ICWA. I don't know if any of you are faced with that one. That's one of those instances where somebody thought of a unique problem and then they put it in the regulation.

Next, you need an estimated total number of Indian children residing in the affected territory, together with an explanation of how that number was estimated. Once again, it's an estimate. And so, that's what you need in your petition.

Now, you've got to have a plan as to how your court will operate. That's another thing that will be required. These are the practical considerations. It may sound intimidating. But I don't think that anything there is insurmountable for any tribe that wants to reassume jurisdiction. If they want estimates, give them just that, estimates. If they want citation to your constitution, you interpret your constitution. There are no fundamental obstacles to accomplishing your reassumption goals, if you want to do it. You do have to decide what kind of jurisdiction you want. If you're in a Public Law 280 state, you need to decide whether you want to establish concurrent authority or exclusive authority. I think that everyone should operate under the assumption that you do have concurrent authority. The state of Alaska was just wrong in its case. There may be other cases that have decided that issue. I think they're wrong. But remember, you can reassume exclusive jurisdiction if you're in doubt. If you want concurrent jurisdiction, just file a petition for that reassumption.

Hon. William Thorne: You can also start piecemeal if you want. You don't have to take on everything. You don't have to take on termination cases. You may even want to simply start out by renewing foster care placements or emergency placements, making sure that these placements are handled properly. Make sure the reports come in there, and then defer the case, until you get more confident in your system. Then take the next step. It doesn't have to be an all or nothing arrangement. I think that very quickly, as Abby said, the confidence will come. You'll see that you can handle these cases. When a question comes up, you can look and ask other people. You don't have to reinvent the wheel. Find out what works and what doesn't work. Talk to other people until you can gain the confidence you need, and then do that part yourself. Build the system! It doesn't have to be in place over night, ready to do everything the next day.

Gene Madrigal: My name is Gene Madrigal, California Indian legal services, San Diego County office. We do work with about 32 small reservations in that area. There are about 108 different small tribes in the whole state and, I think, a little more land areas than that. We've discussed off and on the possibility of trying to establish a consortium type court in our area. The tribes are so small that it's virtually impossible, we think, to have a court for one small reservation. The funds are too hard to get. And the resources and the personnel that you'd need are too difficult for one tribe to handle. Right now, I am aware of only two or three smaller courts that are in California. There's one in Needles that does some family law type things, I think some Indian Child Welfare, and there's one up in Hupa.

We think it'd be a very good idea though, because as Mr. Thorne's explained, the judges right now don't know the Indian reservations. They don't know the first thing about what goes on in a reservation. They are very hesitant to transfer cases to a reservation. They just don't understand anything. And if you could set up your own court, then I think you'd have personnel, sensitive to Indian matters, providing the decision making that the outside systems now make.

One of the problems in California is that it's a Public Law 280 state. It's harder to get funding. The BIA's former position was that you couldn't get funding in a Public Law 280 state. They said that the state has all the authority and all the jurisdiction, therefore we're not going to give you any money. But recently, we had a meeting in San Diego County and now, the BIA has a kind of indefinite position. They'll give some funding but they're not exactly sure what you can do in California, or for that matter, any other Public Law 280 state. It's our position that the tribes have this concurrent which is joint jurisdiction. This joint authority means they can have their own tribal courts and handle cases and the state can do it too. You can have a joint system, but the BIA usually drags their feet, and so they have to be pushed into these kinds of things in order to get these courts funded. The case that you're talking about LeRoy, is that not the Venatie case in Alaska?

LeRoy Wilder: Yes.

Gene Madrigal: Is that the one that was appealed to the Ninth circuit, and the Ninth circuit has said that tribal courts do have a joint authority?

LeRoy Wilder: Yes, you've got it. It's an interesting situation. I didn't go into that case, but the Ninth circuit has ruled in either a separate or a similar proceeding, but the Federal Circuit Court has interpreted the Act to say that there is concurrent authority. The highest court in the state has a ruling on the books that says the opposite. Now the Ninth Circuit can't overrule the Supreme Court of the State of Alaska, so you have a situation in Alaska where nobody knows what the law is. If you're in federal court, it's one way, and if you're in state court, it's the other.

Gene Madrigal: I don't know if most people are in Public Law 280 states. Are most people from California? Who's from out of California? So the majority of people are in California, a Public Law 280 state. With Public Law 280, when you have a hostile state, they try to take over full authority. In California, anyway, they try to say that the tribes don't have any authority. Consequently, they don't work with the tribe in developing their own systems. In our experience, they haven't gotten much cooperation from our area. We push forward in our area, trying to do a consortium type of court. We're hoping to do it in conjunction with an ongoing Indian Child and Family Services project that already has ten different tribes as members.

We're looking for funding sources, and of course, the BIA is the first one you go to. They're always saying that they don't have any money, but I think that's where you ought to start. I think that you can get some money from ANA to develop your tribal codes, these codes are something that you're going to need. One of the first things you need to address is how will the court function, what's the authority of the court, and you can your tribe get some money out of there? And then, I know there was a session here earlier that I went to discussing the matter of private funding.

Also, there's apparently a bill that has been introduced in Congress, the Miller Bill. I don't know if anybody here on the panel knows anything about that. I've got a copy of it at the National Congress of American Indians (NCAI), introduced by Congressman Miller here in California. It's a bill to fund tribal courts. And he proposes $30 million for the purpose of developing, enhancing, and advising tribal courts commencing in 1993, and then continuing for four years. I think that this bill has been introduced but I don't think anybody knows any more about it than that. It's also known as the Indian Tribal Justice Act. If something like that was introduced, and if it could actually get funding, that would be a big help. The matter of funds is a problem we always run into. It sometimes takes $200,000 to get something going.

Hon. William Thorne: Again, if you want to do a first class operation, always spend all the money you can get. There's never any problem with that. But, it doesn't have to be that fancy to start out. I mean, most of you have places that the council meets in. The administrative body might handle these things in the same chambers. The council meetings are usually recorded. It's the same process to record the administrative proceedings.

You can make do with what you have without a big investment of money. As you grow, and as you want to become more sophisticated, better equipped and so forth, remember that money should not stop you from trying to go forward, especially if you think your community's going to benefit from it. There may be communities that won't, but I think for the most part, communities will benefit from making their own decisions about what happens to these kids. I know, for example, that in Canada, its federal circuit judges come into some places once every three or four months. It's hard for them to know what's going to happen to those kids when they make a decision about where they go. Outsiders sometimes have a completely different view of what happens on the reservation, and therefore, different from the perspectives held by the people within those communities. It's easy to stay in touch. I think the days are long past when people think that solutions are going to come from the outside. Experts are not going to be able to walk in-whether they wear a black robe and bang a gavel, or not. They're simply not going to be able to just walk in and impose a solution that's going to work for these kids. We are going to have to develop those solutions, and develop them inside the community that those kids live in. This means that the parents and the people who don't have kids are both going to have to take responsibility and come up with solutions that work. Then, we need to take those solutions and try and impose them at the community level. And you can do that easier with a community court than you can with somebody coming in from the outside. So you can always spend all the money you can get, and the more money the better. I simply wouldn't let the money stop you, if you think the community court system is going to work. That's all the tribal court is, it's another word for community court. That's where the Anglo court systems came from. Small communities deciding for themselves what the solutions to their problems are. And not having outsiders come in and telling them what the solutions are .

Abby Abinanti: I think the other thing we have to look at is that we've developed or copied some very bad political practices. One of the political practices that I think the communities have developed is, that we give a lot of lip service to the fact that the children are our future. When we sit down as tribal counselors to allocate funds, then the children come out exactly the same as they do in the State of California, which is somewhere near the bottom.

Gene Madrigal: After roads and everything else.

Abby Abinanti: I know. I think that this is a political reality that we have to take a look at seriously. Because we have found, whether through funding or whether through the government making funds available for certain kinds of things and not for others, that we have now developed mirror governments that look very much like something that I don't think our old people would be very pleased with, if they really looked at this kind of stuff, or if they had the patience to look at it. I think we have some real political problems in our own communities involving allocation resources, where we will spend money to build a fancy tribal council office and then we have no facility within which to handle family issues. Now, to me, that's a serious problem. Now, I hear that I've been around for a lot longer than, maybe a lot longer than I would like to think, and I've heard tribal leaders talk for such a long time about the children as our future. I've sat and I've watched as the resources get allocated. And I've watched us pick each other apart concerning political ideas about urbans versus tribal versus whatever, but what we've got to remember is, we're talking about children here.

And I think we have to rethink some of our processes here at both the tribal level and at the family level. We have to organize ourselves in a fashion that's a little bit better than what I've described or else, we're going to find ourselves, even if we do reassume jurisdiction, even if we do do this, we're going to find ourselves acting the same way. And, ultimately, our people are not going to be very happy with us. We're still having a conversation about that. At one point during lunch, we were saying that sometimes when the Indian court systems are just getting organized, they end up yanking more kids than what the white system is doing. And you go, "Wait a second! What's happening here?" It's because for some reason, we get into this thing of thinking we have to be like them, where we have to set up this court system. If we're a good court system, then we'd yank kids. If we're a good court system then we'll do this. And so, you look at some of these court systems and you go, "Holy Toledo! I think I was better off when I was going downtown!" That's kind of a bad situation. So there are political things that we have to look at. I'm not a psychologist, or anything like that, but you hear people talking about self-hate and you hear people talk about disrespect for ourselves, and this is where it sort of gets played out. It gets played out on our kids.

Gene Madrigal: You do it because you want to do a better job and not just because you want to do the same job somebody else is already doing.

LeRoy Wilder: I was going to point out that it's important to remember that the ICWA takes federal standards and applies them to a state court. That Act doesn't apply one wit to your tribal court. Not at all. And so you're starting from a clean slate when you set up your own tribal court. The ICWA is merely the federal statute that recognizes your inherent authority to do that. But it has been my experience, at least in some cases, that the tribal court that has been set up actually has fewer guidelines and fewer requirements to keep families together than the ICWA and code.

One thing that I think you all have to factor into the equation here is, that you have the right under the ICWA to go into state court and jump up and down in order to require the state system to comply with the provisions of the Act. Now that isn't always a very good solution. Often, the Act is acknowledged only in it's violation by the state. But as part of the long range strategy in certain environments, I think it's almost essential that some cases the appeal at the state court level can get the state court judge's attention, and the tribes have to be willing to do that as well. And if you can't find the wherewithal to set up a system, at least figure out someway to get the state to comply, which may not be the best answer, but setting up a tribal court isn't the only solution.

Abby Abinanti: We talked some about cross training, if you will. Having joint training for our workers, their judges and the judges workers because really, there is a finite amount of resources that are going to be spent on children and families. What you don't want to do, and what I've seen in California, is to allow the state system to use any Child Welfare Act projects as an excuse to not serve our communities, because they're saying, "Well, you go over there. You get evaluated at the ICWA project. You go over there. You get services over there." In effect, they're increasing their financial ability to serve the non-Indian community by not allowing us access to any of these services.

That is a big mistake. We still have to demand interface with these systems because there is never going to be enough money to do what we need to do in the Indian communities. And so, yes, I'm very much in favor of having Indian service providers providing services, but I also think that there is a reality here which is, there is more need than there is ability to serve. That means we have to concentrate on making sure that they don't use this as an excuse. I've seen this happen in county after county after county. First they fight you, and then they go, "Whoa, wait a second. Is it an Indian case? Call up Marian, send it over there. We don't have to do anything else."

You don't want to let them get away with that. We have a right, and our children and our families have a right to those extra services, too. So it isn't enough. We have to use everything we can get, and still work with these people and get some respect for that. I think you have to watch that kind of thing, so no matter what we do, we're going to have to deal with the reality of going back and forth between these two cultures. Because that's the way it is. We don't want to throw out everything. We have to use some of this stuff. We have a right to it. And part of the money that each of these counties gets is for us, to serve us, and they're not doing that. When they see these ICWA projects, they go, "Boo!" and that's it. So you have to watch out for that kind of stuff, too.

Demand to be served on behalf of your clients. That means that when you're looking at trying to do reassumption, you have to look at all the services that are available in your county, in your state, from your own agency, and from the state. Make sure that when you do, if you are going to do reassumption or if you're not, that you access those services. You may not be ready to do reassumption yet. But you should know all the available services. You should be able to go, "Okay, we're going to have joint case management of Indian cases. Joint case management would make a significant difference." If you would sit down, if ICWA projects and social workers would sit down with the workers downtown and make up joint case management plans so that you have all the services that are available, that in itself would be a major improvement of what's going on right now. There is this whole continuum of reassumption, nonreassumption, of things that you can do that will dramatically improve the situation for the clients that you're trying to serve. You can't just think about it as the one or the other. You've got to think about, "Okay, well, how can we enhance the services?" And I agree with LeRoy's position which is, what you're trying to do is say how can you provide the best services available, whether that be reassumption or whether it not be reassumption. That's really what motivates us and what should motivate us. And to some extent, it also involves us in dealing with our tribal councils.

We have to educate the tribal councils and in some ways that's kind of, I won't say depressing. Yet, I do sort of think, "Okay, it's depressing." But I know when I walk into hostile courts, which I do quite a bit, I do have to educate those judges. I think that, somehow, I find it a little more difficult when I walk in before a tribal council, and they have so very little idea of what it means: What the issues are, of the importance of role models, of their importance as community leaders. It's like they've lost the notion of the harmony and what their role in that harmony is for families. That's part of the process, too. When you're working with families, you have to extend yourself into the larger picture. If there's no harmony in the community, then there's no harmony in the family. That's a difficult process. When you have a tribal council that is not providing good role models, that is not active with the families, it's going to be hard to get a social services program running. It just is. That's the bottom line. No matter how hard you try, if you've got leaders who are not acting consistently with the goals of the program, it's not going to work. Do you have any questions? We could take questions now.

Woman: Do you have any suggestions?

Hon. William Thorne: I think it sort of depends on the setting you're in. In California, we have a small community. What works in Navaho is not going to work in that small community. Navaho has a very sophisticated multi-branch system very much like the federal courts. Western Washington has a circuit system that seems to make sense. There are also some medium-sized tribes that have a part-time juvenile judge that sits along with the full-time regular court judge. It sort of depends on the resources and the community you have, and whether you share resources or you have a full time system, or you could even have multiple layers of systems, like the Navaho.

LeRoy Wilder: And I would suggest contacting the National Indian Justice Center or the National Indian Court Judges Association, or whatever, and explain what your population base is, what your land base is, what your case load is, etcetera, and see if you can have someone identify an operational tribal court system that's similar in demographics to what you have. Then take a look at that system. Basically, it's a mix and match thing. I've pointed over here to an outstanding court system that has been in existence for years. But it's a large tribe, and relatively speaking, you have a fairly large budget.

Man: It's the only tribal court I know of that has a retirement system. That's a pretty high level of commitment for a tribal government.

Abby Abinanti: Well, the National Indian Justice Center is located at the McNear Building, No. 7, Fourth Street, Ste. 46, Petaluma, CA 94952. The phone number is 707/762-8113. And if you want to call them, you can ask for Jerry Gardner.

Woman: I would like to make an observation. Going back to the oral tradition of what family is, what would your criteria be concerning a return to that tradition? Do you go back to the tribes and ask the elders like we do, or we intend to do? What is your idea about the family? How do you define family problems, etcetera, in the community? In my case, I am an oral historian. I have it in my head what the family means. Now I intend, because I've talked about it for six long years, to sit down and start writing a book that defines what the family is, and how to deal with the different things that come along but only from the tribal point of view. What I know, what the elders have told me, etcetera, these things will go into that book. Is this the kind of thing that you would go back to? I'd like to hear this because I'm also very much aware that in Canada, we have training for law students which occurs in Saskatchewan. Then they go back to their universities where they get their degree. But then, they still have to go back to their own communities and get these pieces of information so that they can begin to act on behalf of their clients in their communities. And I know this from my own experiences. Could one of you just address the oral history part?

Abby Abinanti: Well, I think this aspect is very difficult because we don't have very many good models on how to incorporate a traditional system into-how does that evolve to today? I think that you're one of the people who will possibly be a pioneer in that. There is no right way to do that. I think that you have to apply yourself to it. I think it's a good project. I think of certain tribes who have set up, for instance, the peace maker court where you just have traditionalists making decisions around certain kinds of issues.

Man: Another example that I just learned about is the Hopi system. They have a functioning tribal court system, but that court system makes referrals on juvenile cases, sending the case back to the community the child came from. There, the traditional leaders tell the judge, "We will handle the problem." At which point, the court steps aside as the traditional community leaders in that village solve the problem, or the traditional leaders say, "No, we don't think we can do this one." Then it comes back to the tribal judge who then proceeds, just like a regular court system would. So there's one example where the two systems work side by side, deciding which one can best try and deal with that problem most effectively. And the tribal court handles things in each of the local communities which are really sort of autonomous. They don't have a lot to do with each other on many issues. Each community has its own traditional leaders. They deal with the case of the child who is there, and they think that they can get the other court to back off. If they deal with it, then the court goes ahead and handles it just like any other court would.

Woman: I'm a university student. In my own reading, and what I know for myself and what I know from the tribe in the oral tradition, I see that we're coming from two different directions. And because of those two different directions, I sometimes find that we miss each other. The law, at times, does not serve anybody. That includes the people who are supposed to implement the laws, excepting the person who is supposed to make a judgement, and the person who is being judged. I think that I would like to see a more holistic approach involving grandmothers, mothers, fathers, and grandfathers; everybody should have a say. If I go back to the old traditions, it says that the responsibility is there for every person to say, "I have been wronged or this is going right." Everybody has an opinion. And when you get all this together, then it seems to me, that something has to come out of it.

Man: That kind of flexibility is possible between tribal courts and state courts, but much harder to do in public courts. Most of the tribal courts that I know of allow anybody who has something to say to come in and give them the benefit of what they think. Particularly when we have family matters or juvenile matters. Grandma thinks that she needs to say something, so she's allowed to come in. In the state courts, its a lot more restrictive about who can participate in those settings. That's an example of where the communities can draw more resources. Maybe, you can develop something in Canada that is less tied to an Anglo court system and more to a community problem solving group.

Abby Abinanti: You mean if they decided not to do it in tribal court?

Man: Usually, when there's concurrent jurisdiction, we have to be in both places-wherever it's filed or wherever it started first, that's where it ends up. If it starts there first, then that initial court proceeds. Under the ICWA, if one of the parties doesn't want the case transferred back to the tribe, it doesn't get transferred. They have a veto power against that transfer. As long as the court had jurisdiction to start with.

Woman: Doesn't it say with good cause?

Man: No. If you're a part of it. If you're one of the parents or the Indian custodian, you can say, "No. I don't want the case to go back to tribal court." And it doesn't go back, if the state had jurisdiction to start with. Now if a person lives on the reservation in Arizona, then the tribal court is the only place it can be done. But here in California, for example, where it is a Public Law 280 state, or if they live off the reservation some place, the state can have it transferred back. It'll have to transfer the case back if there's good cause or if somebody, one of the parents says "No, I don't want it transferred there, it does not get transferred."

Woman: What about the people in Washington? You have the addendum to the ICWA, which is an agreement between the state VSHS and the tribes. They say that if it's in the state court, then you can do a tribal intervention, accept jurisdiction and have it transferred, irregardless of whether this parent wants it or not.
Woman: That's exactly what is mandated in Washington.

Man: If the child resides on the reservation, then clearly the parent has no right to say, "No, don't send it back," because that's the only place it can be heard. But if they're residing off, the state may assume jurisdiction.

Abby Abinanti: It says resident or domicile of the reservation.

Woman: That's right.

Man: Or if you're a resident of the reservation?

Woman: Or domicile.

Man: But then they can't object because the only place it can be heard is in tribal court. It cannot be heard in the state court then.

Abby Abinanti: Did you have a question?

Man: My question is basically this: just how much effort can the community support, both in terms of available neutral parties to make a decision and of those people who are not related. The larger communities can support more effort at getting something like that. Smaller ones may have to share that responsibility. California is in many ways much like western Washington. There are lots of small tribal groups in different places. Some are usually of a good size, some small, I mean, anybody's small compared to the Navaho. There are places in California that are just a handful of acres. These places ranges anywhere from a couple of acres and ten members, clear up to about twelve hundred members and, oh, forty thousand acres, sometimes, a little bit bigger in northern California. I consider all the ones in southern California small. Up to twelve members or so, because I know even with that number of members and the resources they have, it is not enough to do a traditional Anglo-type court. We've talked about doing variations of that, even just designating a committee, but what we've been looking at, in the meetings I'm having with several tribes, is something a little more formal. And to do that, I think you need more than one.

Woman: Can you put them together?

Man: Sure.

Woman: If you have them and make a critical mass?

Man: That's what Western Washington has done. There's how many?

Woman: Around fourteen.

Man: Fourteen of them. Small ones. And they actually have a couple of judges now that ride circuit. If they're located close to halfway together, it's not that big of a deal. In western Washington, I think that the furthest one away is about an hour and a half.

Woman: So they go from the Canadian border all the way down to Washington?

Man: If the distance gets too great, then it's obviously too much of a problem. Then you're talking about financial resources to support the travel.

Woman: They have four judges.

Hon. William Thorne: But with that, they can rotate people through much easier. The closer you are, the less resources it will take to get somebody to drive down the road to hear a case. They drive for several hours or else, you're talking about flying somebody from one place to another. Then it becomes very expensive to do it that way. But there's no reason that you can't do a consortium.

There are also places that have their own independent tribal court but have agreed to consolidate an appellate system so that they can share those resources. Arizona is actually moving forward, fairly quickly, and creating agreements between the state and the tribes. Tribal courts and the state courts have been meeting together in Arizona for a couple of years now and sharing resources. The trial judges now go to the state judges' education programs. They're members of the state bar committees and so forth. So, there are efforts to try and get the two to work together. It may be, for example, that you arrange to have-if you've got a community nearby-the Scottsdale tribal court hear the case on behalf of a tribe which may be further south. When you give jurisdiction to another tribe to hear the case, it makes for easier referrals, easier monitoring and easier resource acquisitions from the state. You can travel to Scottsdale, or it may be that you can convince somebody from the tribe to send up a judge who can then borrow a courtroom and hold the hearing there. I know that as a tribal judge, I have gone into state court judges' chambers in different places, to hold tribal court hearings. If people decide that they can cooperate, then they don't have to be enemies. As a judge for the Ute Mountain youth, I've gone into Durango and used the city courtroom there to hold the tribal court hearing on the placement of a child and to hear expert testimony. So there are ways to borrow resources. I know of federal courts that have lent their courtrooms to a tribal judge to do those things. So you don't have to physically relocate everybody to where the tribe is, necessarily. Sometimes it's a matter of the tribe sending one person up to hear a case, instead of transporting thirty people down to the reservation in your case.

Woman: Right and with us, rather than hearing the cases right away, what we're doing right now is we are starting with a procedure of notification and then, establishing ways to follow up on those kinds of things. But we don't get notified until the case is ready to go to court.

Abby Abinanti: Well, I think the important thing is that everybody has a certain set of problems and that what you try to do is come up with a solution that ideally resolves that set of problems. And I think you're right. You're attacking at the point of early intervention. I think each of you needs to develop a model for your particular set of problems. You can then move resources around. I think that is important. I think that if you wanted to, like Judge Thorne was saying, you could move the tribal court up there if it comes to that. This may take care of the problem for you, if you can get this agreement that whenever you have a set problems, what you try to do is draft a set of approaches to those problems that are unique to that set of problems. Because you know what the problems are. If you can set up a problem and say, "Well, if we have this we could do better." I think that's a real good approach. What you're trying to do there is critically look at your set of problems. You are not just saying, "Well, this is how it's done over there." You've analyzed your particular problem and I think that's important in all these situations. Like the question you first brought up about tribal court potential. If you know exactly where you are, then you can find a solution to exactly fit your situation. And I think that's important because we all have alot of similarities but we also have alot of unique differences, too.

Man: Instead of having a tribal judge come up to Phoenix, another option might to be to have the council designate somebody up there to act as the tribal referee, like a juvenile referee who is right there in the community, and who would then be able utilize one of the state commissioner's rooms right there in Phoenix. The hearing could be held there and the appropriate decisions could be made there without having to bring somebody else in. And if the tribal council doesn't make for our purposes in the Phoenix community, then this is our court referee. Somebody who's respected in the community. You don't need to be an expert. Just somebody who's willing to take the time to learn what needs to be done and willing to put in the time necessary.

OPENING CEREMONIES

(Friday, January 17, 1992)

William Salinas: Good morning, I would like to welcome you to the third day of our conference. We've had two very, very good days. I want to thank the Alumni Association for putting on last night's get together. It was very nice. The purpose was to network, get to know other people, and we sure did have a lot of people present. We appreciate that.

On Wednesday, Kevin Sanders introduced the people that were responsible for the coordinating the conference, and I want to thank them once again. I especially want to thank, Troy Johnson and his staff, because without them, this wouldn't be going as smoothly as it has been.

This morning I have the pleasure of introducing a Cahuilla elder who is from Southern California. He is also a faculty member here at UCLA. He attended the conference last year, and I think, I mentioned last year that he's from the same area that I'm from. It's with great pleasure that I introduce you to Ernie Siva.

Ernest Siva: Good morning. It is a pleasure to be here again. I wanted to say a few things. I noticed that both the program and Bill refer to me as a Cahuilla elder. When my cousin, Alvino saw that, he said elder? And he kind of laughed. After a little silence I finally said, "Well anyone over thirty-years-old is an Elder at UCLA, especially if they're Indian. Anyone that old, has to be very wise and so forth."

Also, I have to say that culturally and traditionally, I'm Serrano. My mother's a Maringat. We call ourselves Maringa'yam. If you ever go to Palm Springs, you'll pass by our reservation. It's very small. If you blink, you won't notice it. It's called Morongo. The word Morongo is the Spanishization of Maringa. So you learned something new today!

I would like to say that you people are doing such a great thing advocating for our children. If it weren't for you, nothing would be changed or get done. Our people need to thank you for that, to take the time and to get the training, and whatever else it takes to do that.

What I have to say, I will say in Serrano. I will follow with a short song also. This song is to honor the occasion, that we're all together; it says that a lot of people came here and they were going to do something. *(Indian song)* Thank you.

William Salinas: Thank you very much Ernie. It's a real pleasure to introduce the next person who is going to be the keynote speaker this morning. Judge Thorne, has in a sense, devoted his life and his career, so to speak, to working with the Indian people. He was formerly a trial judge. Currently, he's a Municipal Court Judge in Utah. Our organization utilizes him quite often in doing training for us.

We utilize him because we need to break down the barriers that we face as an Indian people. We use him as a trainer, so that he can let the people know—the non-Indian people and the social services people—what Indian culture is about. He also talks about the law and how it should be applied. So, we utilize him in various facets. At this time, I'd like to present Judge Thorne.

Honorable William Thorne: Thanks Bill. What I thought I would do this morning is talk a little bit about where we've come in the last few years, and what's ahead of us. It's not very often that we get a chance to reflect upon the bigger picture. Most of the time, in the work that we do, we're usually only concerned with one case at a time. It's real easy to get tunnel vision, and a lot of times, the tunnel vision that we get ends in a wall of frustration, trying to help the families, and trying to deal with the system.

Therefore, what I hope I'm going to do this morning, is to look above that a little bit, so we can see where we've come and from and where we're heading to. And to do that, I'm going to be expressing my opinion on some things. You ought to know right up front that I'm espousing my own, personal opinions. I'm going to tell you a little bit about myself, so you can decide if my opinion's worth anything to you or not. If it is, fine. If it's not, I'm not here to convince you. You can decide for yourselves.

I'm a Pomo Indian from Northern California. I got my undergraduate degree at Santa Clara. I went to law school at Stanford. I practiced law in Salt Lake City which is a strange place for a Pomo Indian to end up. But I went out there to work with Larry Eckohawk, and we set up an Indian law firm out there.

For those of you who are familiar with Larry, he's now the Attorney General in Idaho. He is the first American Indian to be elected to a statewide office in this country. I practiced law for nine years, seven of those years were spent as a part-time tribal court judge. In addition to my law practice, I worked on a regular basis at Fort Hall for the Shoshone Bannock Tribes, and at Fort Duchesne at the Uintah and Ouray reservation with the Northern Utes, and on a case-by-case basis at Fort Belknap, and with Northern Cheyenne, Flathead, Ute Mountain Ute, and

Colorado River Tribes. I have even handled a case at Fort Mojave, Needles, and several other places on a case-by-case basis, including Jicarilla Apache.

So, my tribal court experience has been fairly broad. During that time, I also trained with the American Indian Lawyer Training Program and at the National Indian Justice Center, training tribal advocates and tribal judges. And I did a stint on the Native American Rights Fund (N.A.R.F.) Board of Directors.

So you understand, my bias is in favor of tribal courts. I've been a state judge for about five-and-a-half years now, and I think the quality of justice that appears in tribal courts, is at least, as good as what happens in the state courts. I think sometimes in the state courts, we tend to get lost in the procedure and forget about the substance, forget about what we're actually after—justice and fairness.

Tribal courts, if they have a fault, it's that they sometimes overlook the procedure and are more concerned about the substance. And to really have a system that works well, you need both. You need the appearance of fairness, and you need the fairness and the just result. You've got to have both. So I think each system can learn from the other.

What I want to talk about today are the conflicts. Sometimes tribal courts and state courts are adversaries, and it doesn't need to be that way. The Indian Child Welfare Act (ICWA) sets out, or is an attempt, to legislate a minimum standard. And it was done because of what I view as cultural chauvinism. The dominant society looks and says, "We value what we are. We value what we have and the way we do things." And with good reason. But then they take it one step further and say, "If we value what we have, then anything different must be not as good." And that's where I part ways.

Being different is not better or worse, it's simply different. And being different works for different people. And so the ICWA was an attempt to make a non- Indian system recognize tribal values, cultural values and make sure the kids got the tools they needed to deal with the world as it is out there now. Not as the ideal world is.

In an ideal world, there would be no negative or positive value with being different. We would simply be different. But it's not an ideal world out there. So we've got to equip our kids with the tools to deal with it. And that means the self-confidence, the pride in who they are, so that they can deal with the challenges and the problems that they face.

I think it's time for states and tribes to decide, that it's not a battle to see who's going to win, and that we share common interests. Those kids are all of our futures. It's not just the tribal future. Indian children, also are citizens of the states, and benefits. If they do poorly, everybody suffers.

So, I think it's time for state case workers, tribal case workers, BIA case workers, to set aside the kinds of differences that arise in the systems and the distrust, and learn how to work for the kids. Learn how to work together. And it happens.

I was talking with a friend on the phone last night trying to decide what I was going to say today. By nature, I'm not an optimistic person. And by training, lawyers are taught to be cynics and to look at what could go wrong and then plan for that for your clients. Deal with the worst. But I'm here to tell you this morning, that I see a lot of hope. I see improvement. Fifteen years ago, when I got out of law school, I would not have predicted the positive changes that have happened. The ICWA has begun to make a difference and the systems have begun to work together. But there's a long way to go.

Let me give you a couple of examples of how things can work together. The tribes in Utah, specifically the Utes, which have the most trust land within the state, fight with the state about everything. They fight about jurisdiction, they fight about water. They fight about taxes. They fight about zoning, criminal jurisdiction, air quality, everything you can think of, they fight about–except the kids. For some reason, and maybe it's part of their Mormon background, they've chosen not to fight about the kids.

As a result, the State of Utah has made services available to the tribal court, specifically to the tribal juvenile court, on the same basis that it's available to the state courts. If the tribal juvenile court orders a psychological examination, it's provided by the state and paid for by the state. If a child is in foster care, even if the tribal court places foster care with grandma, the state pays for it. If a child needs special services, is an incest victim, the tribal court orders it and the state provides it. Corrections, if the tribe decides that somebody is uncontrollable and a danger to the community, the tribe can order them into the correction system of the state. The state accepts them. And in fact, they go one step further, and that tribal judge can pull somebody out of a state correction system, whereas a state judge cannot.

So they fight about everything except the kids. And their theory is if there was no tribal court, if there were not Indian people making these decisions, we would have to provide the services anyway. The tribes are closer to the problem, and therefore, closer to the solution. They know the kids. They know the community they grew up in. They know the families. It makes more sense to have somebody who knows the family, and knows the situation, make decisions about what's going to help, rather than try and bring in somebody from the outside who just takes a shot in the dark. They're going to pay for the service anyway, they may as well have somebody who really knows what's going on make the decisions.

Fifteen years ago, I would not have predicted that this could happen. The state and tribe negotiated that kind of agreement. I think it took us sixty days to negotiate the Corrections Agreement. That was a process of educating people. It doesn't have to take years and years. It was a simple four-page agreement that said, "The state will pay for it, if the tribe orders it." Two-and-a-half pages of boiler plate that said, "Either side can decide to get out of this agreement on sixty day's notice."

No big deal, nothing complicated but neighboring state, Idaho, takes the opposite point-of-view. Idaho says, "If we do not have jurisdiction over those kids, we will not provide services." So the tribal court then ends up surrendering the decision-making authority on kids, because they don't have the services that the children need. Now in the first instance, Utah is concerned about making sure the kids get what they need. It doesn't need to be the way that it is in Idaho.

Let me give you an example of where things are going. The National Center for State Courts, which has always been a little bit of a threat to tribal courts, a couple of years ago instituted a project to look at civil jurisdiction and the disputes between state and tribal courts. They set up three so-called demonstration forums. They chose three states to see what efforts could be made in getting the state and the tribal courts to work together. The states were Washington, Arizona, and Oklahoma. Two out of those three have been resounding successes.

Washington and Arizona now have State Judicial Conferences where they train their state judges . They also invite tribal judges to those same meetings. So, the judges are learning the substance, as well as learning the informal contacts, so that when a problem comes up, a state judge can pick up the telephone, call their tribal counterpart and say, "Judge, this is Judge so and so. We met at the conference in Phoenix in June. I've got this problem case. It involves your jurisdiction. Let's see what we can do to solve the problem."

That makes a whole lot more sense than each side hiring lawyers to battle it out, when the kids are in limbo for two or three years, before somebody ultimately does something. And by then, everybody is so bitter, the chances of success are very slim.

In Washington, if I remember correctly, the state even pays the tribal judges to go to those sessions, pays the mileage and the per diem while they're there. In Arizona, state judges have come to sit in tribal courtrooms to just watch and observe. Not to be critical, just to see that there's a different way to do things. They meet on a regular basis.

The State Supreme Courts in those states have held regular meetings with the tribal courts. Use the trickle-down theory. If the top level can be on a friendly basis, treat tribal courts as equals, pretty soon the other people realize that that's the way it ought to go.

So it works in some places. But, I'll tell you in Oklahoma, it doesn't work at all. In Oklahoma, they took the position that there are so many problems, that they couldn't deal with them on a wide basis. They wanted to deal with one problem at a time. And therefore, they will do nothing until a problem comes up. Completely different approaches. It doesn't have to be that way.

I have learned a number of things from tribal judges who are not law-trained, who are simply older, more experienced people, who know how to deal with people. I use those things, in my job, now as a state court judge. I've shared those with my colleagues on the state bench. And they say, "Hey, that makes sense. I'll try that." And if they try it and it works, then I tell them where it came from so it doesn't bias them. I tell them it came from the seventy-year-old high school drop out, who sat as a judge for ten years, and his only real skill in life is he that he treated people with respect, and he listened to them. And, he figured out ways to work with people.

They don't teach you those things in law school. And I'd be surprised if they teach you those things very well in schools of social work. Lots of theory. Not a lot of concrete lessons on how to treat one person at a time with respect. And yet that goes a long way.

The state system can learn from tribal courts. Tribal courts can learn from the states. I mean, the state system is three-hundred-years old in this country, going back to the English roots, hundreds of years before that. Tribal courts are new. Tribal courts have not been a functioning reality until the last twenty-five years.

Think back to where the federal court system was in the first twenty-five years of this country. Remember the disarray of presidents trying to ignore the orders of the Supreme Court.

Jackson saying, "John Marshall's made his decision. Let him enforce it." Those same problems are happening today in tribal courts. And I would urge those of you who do not believe in tribal courts, to be patient. Give the tribal courts a chance to grow, just like your own courts have had a chance to grow.

In July, this past year, there was a national conference in Seattle. We had state and tribal court judges from all over the country come together. Not in my wildest dreams did I ever think that you would have two-hundred state and tribal judges, and Supreme Court Justices sitting down, working as equals, trying to find common ground. And yet it happened.

They asked me to be the closing speaker of that conference, and one of the things that I pointed out, in looking at the forums in Arizona and Washington and contrasting it with the forum in Oklahoma, is the way to make it work is by finding things that you can work on together. There will always be problems. And if you want to focus on the problems, you have a built-in excuse for doing nothing. But if you're truly interested in making improvements, find things you can work together on.

If you can build a history of working together on things, when the occasional disagreements come up, it's easier to walk away and say, "That so-and-so, I disagree with him on this, but he's basically a good person and we'll deal with the next problem when it comes up." You don't have to agree on everything. But if you can build a working relationship, it's easier to disagree and continue working together. Whereas, if the only time you come together is when there's a problem, you've doomed yourself to a life of frustration and failure. Systems *can* work together and the children will benefit from that.

This past, September, I was invited by the North Dakota Supreme Court to come up and be the closing speaker of their conference. In law school, when I felt so alienated from the other law students, my motivation for being in law school was different from most of the other law students. I was not there to get a high-paying prestigious job at a major law firm. I was looking for something different. Not in my wildest dreams, at that time, would I have dreamed that I'd be sitting next to the Chief Justice of the North Dakota Supreme Court talking like we were old buddies.

And yet, they had made the commitment to try and work with the tribal courts in their state for the mutual benefit of all the people. It doesn't mean we have to approve of everything they do. Unfortunately, last night, I was talking with some people from L.A. County who have had a problem with one of the tribal courts in this county. I just sort of shuddered when I heard which one it was, because we know who the problem children are just like everybody else does. And I'm not going to kid you and tell you that they're all perfect, because they're not. I'll tell you the vast majority of them are, at least, as good as the state systems. And with a little bit of pride, I'll tell you that a lot of them are much better, because they deal with those kids as individuals and they treat everybody that comes in with respect.

The substance is more important than the procedure. You need both to do well. But if you have to err on one side, what I've learned tells me that the substance is what it's supposed to be about. I mean, we're all familiar with criticisms that lawyers and the court system get from people who don't work in that system. That's where lawyer jokes come from, right? Procedure over substance.

I'm a terrible joke-teller. My wife cringes when I tell her I'm going to tell a joke someplace, much less in front of people. But one of the jokes that I do is a lawyer joke. So I'm going to do that. And this, sometimes I think, epitomizes the way outsiders look at the court system. Not just lawyers, but everybody who works in the court system. And some of you have probably heard this.

There are three shipwrecked survivors on an island. There was a doctor, a lawyer, and a priest. And the island was in the middle of shark-infested waters. And a ship comes sailing past and they decide somebody needs to swim out and get help. They decide the priest can't do it, because if somebody gets bit by the sharks, a priest will have to give him the last rites. They decide the doctor can't do it, because if they bit by those sharks, they have to provide medical attention.

They decide the lawyer is expendable. So the lawyer swims out on the way to the ships. The sharks part and the lawyer swims right through. The priest looks up and says, It's a miracle." The doctor shakes his head and says no, "It's just professional courtesy."

While that certainly is a cynical viewpoint, you need to remember that there are a lot of people who share that viewpoint of the system. Especially when their contact with the system is not favorable. And in the work that we all do, people don't want to be there in that court system. And what you can do to treat people with respect does indeed make a difference.

It's a frustrating job and people don't say "thank you" very much. But the judges depend on you, and so do the kids. And so before I forget, I want to tell you "thank you" on their behalf. On behalf of the judges and on behalf of the kids. Thank you for all the work you put in, treating the people with respect and providing my colleagues and me with the reports that we need.

I did a conference in Albuquerque where we had a panel of judges sit and gave social workers a chance to ask judges questions where they felt safe. They didn't have to appear in front of these judges and they could pick the judges' minds and see how they thought. One of the young social workers obviously had a bad taste in her mouth from court experience not too long ago, and asked, "What makes you so qualified to make decisions. Why are you any good at making the decisions in the court. Why should you decide what happens to these kids. What makes you so qualified." My answer was, "I'm not. That's why I depend on professionals like you to give me the information I need to make a decision. That's my job."

When I make those decisions on a regular basis, I stay up nights worrying about those kids. I wake up in bed at three in the morning trying to decide, "Is terminating this parent's right really going to help make life any better for this child?" I'll tell you from experience, it's a whole lot easier to put somebody in jail than it is to take their kids away from them.

But we depend on people like you. So let me tell you thank you, because there are criticisms from judges when you don't do it right. Among the different self- improvement things, I keep trying to remind myself, is that if I feel the freedom to bitch and complain if somebody's doing it wrong, then I have the counterbalancing duty. I ought to say thank you when you're doing it right. So, let me say thank you.

The vast majority of what you do is invaluable. And the kids, can't say thank you, and judges don't very often say thank you. But we do appreciate what you do and it does make a difference.

What I'm going to do is make an attempt, anyway, at telling another joke. And this, I think, is going to try and illustrate the point that I'm trying to get across. This was told by Danny, he is an attorney at the Flathead Reservation. He told this joke to state and tribal judges at that Seattle conference, and I'm going to try and do it justice.

There was a new BIA superintendent who had just been appointed to the reservation. In order to make him feel welcome, a couple of people there were going to take him out on the lake to go fishing. It was the local priest and the medicine man, who were avid fishing partners. So they took him out in the boat and they anchored the boat near some tules. Early in the morning, they through out their lines. They went through a couple jug fulls of coffee. And coffee, doing to the system what it does early in the morning, the priest stood up and said that he had to answer the call of nature. He stepped over the side of the boat, and walked over behind the tules for a minute or two, and then came back. He walked back out to the boat and stepped in. He didn't get wet at all.

The BIA superintendent was saying, "Where have I ended up? What is going on? These type of things happen in Biblical stories. They don't happen today, people walking on water."

Half-an-hour later, the medicine man answers his call of nature. He stands up, steps over the side of the boat, walks across the top of the water behind the tules, and then comes back. The superintendent now has decided that there must be something special about this place. And he's getting his own call of nature. "If they can do it, I can do it." He steps over the boat and promptly sinks over his head. The medicine man turns to the priest and says, "You think we should have told him about that bridge of rocks?"

One of the many purposes that story could be used to illustrate is that you can have a common goal without arriving there by the same path. The goal of the priest and the medicine man is the same, to have people live a good life. Good life, not in the sense of acquiring lots of toys—like the bumper sticker says, "He who has the most toys when he dies, wins." Not that kind of a good life. But a good life in the sense of being a human being, in the sense of living up to your responsibilities of treating people with respect. They go at it by different paths, but they understand that the goal is the same. Traditional Western religion, traditional Native religion—different paths with the same goal.

Caseworkers dealing with Indian children can share differences of opinion about what ought to happen. And my personal opinion is that the kids ought to be in Indian homes. You've heard from a lot of experts in the last couple of days who can explain that position more eloquently than I.

But I think we can acknowledge that, if someone disagrees about the path that we should take, but is willing to work for the children's sake, that we'll all be better off. We shouldn't pretend that we have the only answer. We need to understand that different is not worse, but simply different. The goal may be the same. If we all walk our own paths, we need to make sure those kids get what they need, because the kids will benefit from it and our lives won't be quite so full of frustration.

The nature of the work has enough frustration for all of us without having to battle each other. State and tribal courts are taking those first steps. And I would never, never in my wildest dreams have guessed that they would. I think caseworkers have begun to take those same kind of steps. I'd urge all of you to work with systems that are different than your own, acknowledging that the goal is the same, but that the paths may be different.

We're making progress. Sometimes it's hard to tell. I got a call earlier this week from a county social worker, in Northern California, who readily acknowledged that she did not have the slightest idea what to do with the ICWA, and that nobody in her office or the surrounding counties did. And it's thirteen years after the Act was passed. There's a long ways to go. But progress is being made and if each of us can take the responsibility for reaching out, treating other people with respect, sharing what we know about what those kids need, the kids will be better off. Thank you.

William Salinas: Thank you Judge Thorne. You know, this is very apropos, especially in California or those states that come under Public Law 280. We've been talking about tribal courts here for four or five years, since Judge Thorne and LeRoy Wilder have been down, and we've talked to various tribal members in Southern California to try to do something about establishing a tribal court, and we're still in that process.

I think Judge Thorne has really made an impact in what he was saying to us, who better knows about their children than the Indian people? And we should be taking that responsibility and making those decisions as an Indian community, as to what's going to happen to our children, rather than having the state or the county do that for us.

Hopefully, you can go back to your communities and talk to the tribal people there, form a consortium. We need to start now to develop some sort of a tribal court system in California so that we can better serve our children.

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WORKSHOP 1

Cultural Competency

(Friday, January 17, 1992)

Facilitators: Maria Tenorio, *Executive Director*, Native American Program of Oregon Legal Services

Maria Tenorio: Good morning, my name is Maria Tenorio. I am the Executive Director of the Native American Program of Oregon Legal Services. I typically come to these conferences and lead workshops on the Indian Child Welfare Act (ICWA) procedures, because I previously was the ICWA consultant for the Oregon State Department of Human Resources for seven years. I just came into the position I have now about one-year-and-a-half ago.

Today, I am pinch-hitting for my good friend Terry Cross, who had a conflict, and could not present at this workshop. I have been doing cross-cultural sensitivity, cultural awareness training from some ten years now, and I appreciate those of you who are here to learn more about the topic, because it is a very critical topic. It is described in the book as cultural competence. So I've had about a month to try and decide, "What this means and what is their approach? and, Who are we directing this message to?" So I'm going to try to balance what I have to say with a couple of different approaches.

The first objective is for people to gain an appreciation of the multicultural fabric of our country, some of the history of the concepts that bring about conflict when we talk about diversity, and the demographic trends, the impact of the changing population on cultural diversity, and how America is responding to it.

Secondly, I hope to approach some areas of personal interaction and communication. Particularly to present some materials on how others feel it influences the family. I will have lots of handouts for you.

Thirdly, what I would like to do, because this is a part of most of the cross-cultural workshops that I do, is to take a look at the Indian worldview and to compare it with the dominant society worldview. I would also like to talk about some of those values that translate into behavior, and then discuss direct services with some of the clients that you work with.

Hopefully, we can do all of this within an hour, so that we'll have some extra time. I'm going to be moving right along and giving you a lot of information and a lot of handouts in a number of different areas, therefore, I encourage you to ask questions. Just break in with a question. You don't have to raise your hand. And at the end, we will have some time left for questions and answers. So having said that, are there any questions before we get started?

Man: Will you tell us more about yourself?

Maria: Yes. I am from the Southwest. My tribes are Apache and Yaqui. I am the tenth of eleven children. I grew up in the mid-West, and I came out to Oregon about fifteen years ago. I have worked for a number of tribal programs, up and down the Oregon valley, since then. My undergraduate degree is a double-major in history and political science. I did some graduate work and then went to law school, for one year, and got the background for the position I now have. I went through the American Indian Law Center's scholarship program, down in Albuquerque.

Basically, the work that we do at the Native American program focuses upon treaty rights and the empowerment of Oregon tribes. For the past ten years, the program has worked for the restoration of the terminated tribes, and now we are emphasizing natural resource and tribal development, in terms of economic development. We have legal services funding and do private contracts with some of the Oregon tribes, including the representation of their timber rights. It's a real critical issue.

I didn't anticipate this many people today, because I noticed on the agenda that there was the mockcourtroom with my good friend, LeRoy Wilder. Yesterday, I went to Marilyn Robinson's cultural sensitivity workshop and there were a limited number of people, so I only brought fourteen copies of the materials with me. If you would like, would someone in the back circulate a sheet of paper with your names and addresses on it. If you didn't get handouts, I will mail you handouts from my office.

I don't think anyone has a corner on the cultural awareness market. It has become a real hot topic nowadays, and there are a lot of people who are traveling as consultants on cultural awareness theory. And what I do, is integrate a lot of the material that I have come across with my dealings with other people.

The first handouts are on a Eurocentric-based society. I'd like to approach discussing it in terms of the browning of America. For the first time, in the 21st century, racial and ethnic groups in the United States will outnumber Whites. During the last ten years, according to the Census Bureau, Asian-Americans more than doubled, and I think that's probably because of the Southeast Asian immigration. Hispanic or Latinos grew by more than fifty percent. African-American and American Indian populations also grew. However, European Americans fell from eighty-three percent of the population to eighty percent of the population.

Presently, fifty-one major United States cities have an ethnic majority population, and by the year 2008, it is projected that fourteen states will have ethnic majorities. Those are interesting statistics, not only to you and I, but to the American marketplace.

Why is the American private and public business sector responding to cultural diversity? In the first place, in competition, if the United States is going to compete successfully in the world market today, and it looks as though the developing marketplace are the Pacific Rim countries, then we need to prepare ourselves, we need to capture, to regain part of that market.

Secondly, diversity is in the workplace. By the year 2008, European Americans will be a minority in the U.S. workplace. Seventy-five percent of new businesses will be in the service industry. For many of the ethnic minority populations who do not have the education to get jobs beyond a service industry, that seventy-five percent is going to be a culturally diverse work force that managers must know how to manage, how to cross-culturally manage.

And, in the marketplace in 1990, African-Americans and Hispanics spent $624 billion for goods and services. That's more of a market, than you'd find in most countries.

To increase sales, it's a matter of profit. Underscoring all of this is a matter of profit. Business is turning toward cultural diversity and trying to train its managers to work with culturally diverse employees as a concern for profitability.

The service end of the private sector, I think, is a little bit ahead because they have boards of directors to respond to them. They have a stock market to respond to. So they seem to be ahead in their training. There are a lot of management trainings wrapped around both culturally diverse employees and trying to prevent lawsuits at the same time, because of gender issues.

The public sector will follow the private sector, because it's always more difficult to move a bureaucracy. I was an affirmative action officer in the state system for the same amount of time, seven years. And it was so difficult to move the Child Welfare system in the State of Oregon. You saw your success in increments because of all the bureaucracy involved. But I think more and more, the public sector will be following behind the private sector, if only, in terms of responding to what the clients are saying about empowerment.

In terms of the ICWA, it's difficult to predict because as Judge William Thorne was saying this morning, "Thirteen years after the Act has taken place, we still have case workers in every single state that have no idea. Not only case workers, we have judges who have not even read the Act." And that's true negligence on their part.

Woman: One of the problems is the poverty factor that's usually associated with private service type jobs. It's usually minimum wage, plus any type of compensation tips or whatever, which results in problems for the families. I wondered if that's going to add to the increase in neglect and child abuse?

Maria: I think it already has. I think you've already seen it begin to happen. When I left the state about a year-and-a-half ago, and the economy had started getting bad, we definitely saw an increase in both neglect and child abuse. And you always see that in a time of economic distress. You see more child abuse, or it is reported more, because there is more stress on the family, so there's more domestic violence as well.

Woman: Do you foresee any improvement, any lessening of the problems that we see now?

Maria: Not unless someone pulls us out of the economic crunch that we're in right now. There is a study, a market survey that was done by the National Opinion Institute out of the University of Chicago. It showed that Whites believe the major stereotypes about ethnic minorities, including the fact that Asians, Hispanic-Americans and African-Americans were lazier, preferred not to work versus hard work, were more prone to violence, and were less intelligent. Now, this survey was done between February and April in 1990. So, it gives you an idea about one of the major barriers to achieving an understanding about cultural diversity the workplace, which is that the American public still believes the racial stereotypes. Racism is still a part of the American fabric.

Not only that, I think it's critical to understand that this country was built upon some major concepts and principles, such as all men are created equal, one nation under God indivisible. And so there's this notion that this country needed to grow in a melting pot, that diversity was good only in the sense that you became a part of a melting pot and assimilated into America. But as my good friend, the poet Ed Edmoe says, "You were always expected to melt white."

Cultural diversity made America uncomfortable. It seems to be the notion that cultural diversity, cultural differences was also equated with deficiency. People are unsure and uncomfortable around diversity, so much so that they attempt to ignore it or want to say that they are color blind. How many of you have seen a disabled person, maybe someone with crutches or someone with a wheelchair struggling to get into a building or get onto a bus or something, and people somewhat ignore that person, thinking that they're doing the right thing. Well, I'll give them the respect that they need by ignoring them, rather than lending a hand to help out.

I think that what happens sometimes in the workplace, and with social workers—and in any field actually—is that people try to ignore diversity, rather than recognize it and accept it for what it is. Because of this lack of understanding, many persons in their workplace do not understand their own cultural background. As a result, they do not understand where their own racial biases and stereotypes plug into the work that they're doing. For example, if you take a look at social work, particularly some of the principles of social work, the definition of a problem from a client's perspective, can be altogether different from that of the social worker's perception of the problem. A common framework for one of social work's major principles is that you develop a good working relationship with your client. If you're going to be successful, if you're going to have a successful outcome, you must develop a relationship with your client that's empathetic, that's warm, that's understanding. And yet how can you do that if you don't understand your client's background? And how can you do that if you don't understand your own background, your own cultural beliefs?

This was really pointed out to me, during the training that I did across the state about seven years ago on the ICWA. What I designed was a two-day training model, where we first went in and we gave the cultural background of Indianness and why the ICWA was needed. We explained the legislative background of the ICWA, as well as, what the temper of the country was. We also discussed, what made working with Indian clients particularly different than working with other clients. And then we went in, after people had been conditioned to accept the background and the basis of the Act, and talked the legal procedures.

During the training on the cultural part of the ICWA, I had a lot of people who dropped their defenses as soon as we started talking. I designed this program using all Indian professionals. And it really outraged the social workers when I presented my draft of the training that we were going to do, because I used people like LeRoy Wilder, Evelyn Blanchard, and Terry Cross. They all are Indian psychologists, social workers and attorneys. The state workers were outraged. How can you have these people do this? I had a good administrator who backed me up on it.

I did it for two reasons. Because they knew the law, and they knew the subject well. And, because they needed to be presented as models for people to see people in these professions.

But when we were doing the training on cultural backgrounds, I had a lot of people who were of German, British, or French decent—whatever—and they would often say, "Way back when, I remember my great grandmother, I remember my grandparents talking about this, " when we would discuss Indian values and beliefs and some of our grandparents behaviors, and they'd say, "Yeah, I remember. We were taught to be respectful of our elders." So there was a shared commonality. But I think people had not taken a look at that, themselves.

I think one of the better things that came up out of the series *Roots*, where the young black man traced the history of the African people from their very beginnings in Africa to the foundation of this country. If it weren't for the African-American people, this country, this society would not be where it is today. One of the benefits of that program was that people in this country, started going back and taking a look at their own ancestry. They started trying to understand what they were all about and what beliefs they stood for.

I'll concentrate now on some of those transcultural interactions. The tendency to form judgments solely on the basis of a person's color or ethnic background can be seen as an essence of racism and prejudice. There are certain behaviors which reflect racist attitudes. One of them is adopting stereotypic explanations for human behavior, especially behavior of a different cultural background.

One example I can use of this is when I'm talking to social workers about Indian clients, and they'll say, "Well, I told her that she was supposed to—and I told her this is the paternalistic side of social work planning—that she was supposed to be here and that she was supposed to do this, and she agreed to it. And I said, "Well, what makes you think that she agreed to it?" The social worker just sat there and nodded her head. I said, "Why?

Because she was silent and because she agreed to it could have meant that she was being polite to you, that she was recognizing your authority. Maybe it wasn't in agreement to what you were saying, but that she did not want to explain to you that she could not be at that appointment at that time because she didn't have transportation, or because she didn't have a babysitter or something to that effect." I sometimes think that there is a tendency to accept silence, a non-verbal communication as an agreement. That could be a stereotypical behavior.

Another example I give, is that there's a good friend of mine who is in Northern California. He worked in the state mental health division. That's important in just one minute. He told me about a time, and this could have been about eight or nine years ago by now, that his job was to evaluate alcohol and drug programs across the state in Indian Country. And often times, in these very sterile halls of the mental health division, he would have tribal leaders, tribal people, and tribal staff come up and visit with him. Of course, you know if you're working with new people, you don't immediately jump into business. You start talking about how your folks are doing, how is Aunt so-and-so doing, what's going on with the tribe, when are you planning your next feast; and all this sort of thing. And the, there is always a lot of laughter.

So these guys were yucking it up in the hallway. And he got reprimanded by his supervisor. He got written up and a letter was put in his personnel file that he was causing too much noise. There was too much laughter in the hallways. And this is the mental health division? You wonder why some of these programs are not going well.

I think that is one way that we are able to communicate with our people—we as Indian social workers and Indian direct service people—is through developing that relationship. In contrast, the dominant society will try to keep a very professional relationship, and doesn't permit this sort of connection with people.

This can be replaced by the ability to perceive in any behavior, in another or one's own, an alternative explanation of that behavior, and especially those which you might strongly reject as false.

The following are stereotypical help strategies for staff who are members of a particular ethnic group. I know a lot of times people talk about Indian time. We joke about Indian time. I've heard supervisors of Indian employees say, "Well, so-and-so is always late and I don't know what to do. I guess it's because she's an Indian. I've never addressed her about it." Well, you need to be able to say to that employee or to that client that you need to be on time, and if you are not on time, these are the results of what is going to happen, rather than permitting that to occur.

Another stereotypical help strategy is the non-use of the extended family. In Oregon, we used the family tree chart as part of the package for intake with your client. It was a form that was necessary for enrollment. A lot of the urban clients that we dealt with in the Oregon communities were not enrolled, so we would have to fill out the family tree chart.

When some of the non-Indian social workers saw the family tree chart, they said this is wonderful, we should be doing this for all of our clients, because it permits us to ask questions about the family and to maybe know some of the resources that are available to this particular client. But I think previously, a lot of human services agencies hadn't looked to the extended family as a resource. They had used the nuclear family as a basis for developing a plan for that family.

Number three, missing the importance of cultural background in a person's life. Or on the other extreme, believing that the cultural background is paramount. One of the examples that I use of this is when I was rushing into a meeting very late. The meeting was with the Deputy Administrator. I said, "I'm real sorry, I just came from this other meeting and I didn't have time to grab lunch." I was trying to explain that I was doing the best I could to be on time. He said, "Why don't you grab lunch and then we can meet after lunch." And I said, No, that's all right, I'm not that hungry." He said, "You must go get some lunch." And I said, That's okay, I've gone for three days without eating."

We continued the discussion and throughout that conversation, he began to be more solicitous of me. We began to talk and he was a lot more solicitous than I had seen before. So, I went away from our meeting and thought about it. Then I came back later and said, "Bobby, I just want you to know that when I told you that I went for three days without eating, it was because of a ceremony. It wasn't because our family was impoverished and I didn't have anything to eat." And he sort of looked surprised, and then he laughed. But he had this perception of me. He was dealing with my cultural background. And because of his stereotypes or notions, he thought that when I said that I hadn't eaten for three days, that I had this very impoverished background where our family didn't provide any food.

This is versus the ability to appreciate and accept different values and behaviors, of another race or ethnic background, without having misguided feelings of guilt and romance. I think you probably have examples yourself of romantic notions that people have of Indian people. Sometimes, they ask you some rather silly questions.

Here is one primary one. Avoiding discussions of race or culture, or, on the extreme, talking about it continually, versus the ability to confront your co-worker or your client with your sincere feelings of warmth and empathy. I think probably the most offensive example that I can give of this is, and most of the Indian people in this room will probably raise their hand if I pose the question to you, is when someone asks you what your ethnic background is, and you tell someone you're Indian. And they say, "Oh, yes, I'm part Indian, too." I never realized there were so many Cherokee princesses until I worked for the State of Oregon. I called case workers. I didn't do direct service work myself, but I would call case workers. They would say, "Oh, yes, this child is part-Indian, part-Cherokee." I even had one story of this Cherokee princess who ran off. They gave me this very embellished story about this Indian maiden or Indian princess who ran off with this white man. But I always insisted that they follow through on those claims for heritage, because we did find some Cherokee people, some children who were eligible to be enrolled in one of the Five Civilized Tribes.

A lot of people claim to have had Indian heritage because they are trying to identify with the person that they are talking to, and they are trying to assume either less guilt for a diversity that they don't understand, or they are trying to be empathetic in some way.

If you have the handout, the guidelines for transcultural interactions suggests that you consider all staff as individuals first or consider clients as an individual first, and then as members of a specific group.

Never assume that a person's ethnic identity will tell you all about his cultural values or patterns of behavior. Treat all facts you have heard or read about cultural values with reservation. We'll get into this very soon when I discuss the Indian worldview, and I always do that with the caveat that I'm talking about myself and my experiences, and I don't intend to represent three- to five-hundred tribes.

Remember that all minority group people in this society are bicultural at least. There may even be more culture, and the percentages may differ. The breakdown may be ninety/ten or ten/ninety. But it's a very difficult task of working within two value systems, especially when they are so difficult and when there is so little understanding of one and the other.

Know your own attitudes about cultural pluralism and whether you tend to promote assimilation into the dominant society values. Or whether you stress the maintenance of traditional cultural beliefs. Sometimes, I worked with the corrections department, and I have some of the parole officers' comments. I heard a lot of their comments such as, "If he would just cut his hair, he could get a job." They didn't understand that that person was very traditional, it was a reflection of his or her own values in keeping their hair long, and that they would not be able to cut their hair unless there was a loss or a mourning. So those are certain things that you need to understand as you look at your own cultural backgrounds, as well as how you transpose your beliefs upon another person's.

I'd also like to talk about the Ethnic Competence Model. I am going to pass out several handouts. Ethnic competence is an awareness of areas of one's own cultural limitations. You are able to achieve a dual-perspective, which is the conscious and systematic process of perceiving, understanding, and comparing simultaneously the values, attitudes, and beliefs of the larger societal system with those of the client's immediate family and community system.

You as a social worker, if you are a social worker, you must assess the degree of congruence or incongruence of that client's own system of beliefs with the larger society values. In that way, you gain some insight into the intervention techniques that are appropriate for that client. The ethnic contents model also implies an openness to cultural differences, understanding how you have been adapted by your own culture and what biases and stereotypes you bring to your interactions with others.

This bibliography is a list of mental health-related references specific to ethnic minority populations, it was developed by Terry Cross' institution. This handout is called *Practical Suggestions for Social Workers Who Interact with Indian Tribes.* This was developed through a very broad intertribal committee in the State of Washington. It was put together under the auspices of the University of Washington, who was in the process of developing for the Health and Human Services agency, a training on the ICWA which integrated the state and the tribal social workers. So it was tribal social workers, and I think, an all-Indian committee developed these suggestions.

For example, keep in mind that you are the foreigner in Indian Country. It is up to you to adapt and learn about Indian ways. Do not assume that you are needed, right, or should be in control. Be respectful at all times.

This handout is called *Suggested Tribal Interview Questions for Pre-Planning Tribal Visits*. It suggests that before you go out to a rancheria, or a reservation, or deal with the tribe, that you prepare yourself for knowing about the system that you're going to be working with. You can ask questions about the child welfare program, what kind of employees they have, the average length of case worker staff, the training, questions about the tribal court.

This handout is called *Ethnic Competence Knowledge Areas*. It discuss acquiring the skills of ethnographic interviewing and ethnic competence—a knowledge base about the cultural background of the person seeking help is critical. This check list identifies some of those areas. Look at your ability to know about all of these different areas. The family life, child rearing, health, and help-seeking behavior.

Attached to this handout is a paper on the ethnographic interview. I'm going to hand this out together with an ecomap, an ecological framework for assessment and intervention that's been designed by Ann Hartman of the University of Michigan School of Social Work. It talks about what most tribal social workers do, when they do their planning.

Are any of you in Child Protective Services (CPS)? This is a protective services risk assessment. It is called, *CPS Risk Assessment and the American Indian Family*, it was developed by a fellow out of the University of Montana. It was developed in conjunction with Montana Indians. He had a committee working from Montana. They developed this risk assessment because, as many of you know, a lot of times the risk assessments that are done by a dominant society agency do not take into account the cultural values or the traditional beliefs of a tribe or the family. This is one that has been developed that does.

This bulletin comes from the State of Michigan, Department of Social Services, and I have included it in the packet of materials. There are numerous cases of Indian children in non-Indian homes. This was developed as one state's response to that situation. That is to try to promote a cross-cultural awareness on behalf of those foster or adoptive parents who have Indian children.

In the State of Oregon, our attorneys do some work with the Children's Services Division on behalf of tribes intervening on an Indian child welfare cases. We had one recently, that was in the system before I left about three years ago. They were ready to put the case into permanent planning and send this Indian child on its way to adoption. Someone consulted with me on the case, and I said, "This is an Indian child welfare case. It looks as though the family is Indian. And you don't know whether or not they're enrolled, so you need to follow the ICWA."

Well, three years later, I'm in the Oregon Legal Services Office, and the case comes up again. One of our attorneys brings it to my attention. But by this time, the child is with the same family and is ready to be adopted. The child is, I think, half-Indian and half-Black and was placed in a white Christian home. They described themselves as Christian. So the when the tribe intervened, they said, "This does not follow our placement preferences and we're not going to go along with this adoption."

So the case worker scrambled, and he remembered something that he had been told a long time ago, that maybe the tribe will go along with your social work planning, if the family is culturally responsive. So you know what he did? He put together a service agreement that in three months this family was going to be culturally competent and was going to do some things to let this child know his Indian background.

So the attorney brought it back into my office and she was just livid. I asked her to calm down and to take her letter and rewrite it, because she was very pointed in her response to him. But the case is stalemated now. We have an Indian unit in Portland, and the case worker refused to take the case with that service agreement in it. So it never was signed and it never was developed, and a new case worker is trying to get all five children together into an Indian home.

But I've had case workers over the years who have refused to recognize the Act, if only in ways such as case worker had some Oklahoma kids, and I suggested that the children be placed with their grandparents in Oklahoma on the reservation, because they were getting new houses and this family was going to get a new five-bedroom house, just so that they could take all of these kids. Now, only two of them were their grandchildren, but they wanted all five kids. The case worker refused to move them because he said, "That they didn't speak English."

WORKSHOP 2

Difficult Casework

(Friday, January 17, 1992)

Facilitators: Art Martinez, Ph.D., *Clinical Supervisor*, Tolyabe Indian Health Project, Family Services Program and Marilyn Robinson, M.A., *Program Coordinator*, Indian Human Resource Center, Inc.

Art Martinez: Let's begin to look at this issue. When you start to think, "This case is difficult," what you're really saying to yourself is, "These are difficult people. These are difficult people that I have to deal with." The case or the child and/or the family, the dynamic part of it that you're dealing with is not necessarily difficult. It may be the exception. And so if you can look at it as an exceptional case, your posture is a little bit better. You then begin to look at it as a case that is challenging, and you are going to go through some learning about, it's an opportunity. If it's a difficult case or when you are dealing with people that have become hardened by years of social work, it's like they'll say, "This is the case from hell!" If it's the case from hell, then you're in trouble. It's like you need to go on vacation. Because at that point when you start doing that, you have postured yourself in a position where there are no outs. There's no way for you to grow in your interactions. What makes it that way? What makes these cases challenging? What makes them exceptional? There are four things that I'd like you to look at. Are they child issues or adult issues? In ninety percent of the cases I've ever felt to be difficult cases, it was always adult issues. The child issue was fairly clear cut. The issues of what's going on with the child, and we all agree that we care for the child, or many times even the things that need to happen to the child were fairly clear. But the adults in the picture were very challenging.

Let's pick the child issues apart for a moment. The child issues that will challenge you will be the gray area issues, areas where there's some child ownership of the issue. Maybe you have a child perpetrator. In other words, a child that's sexually molested or assaulted another child. A child that under California State law—they have an interesting way of putting things in California—they call it through some mental depravity of their own. These are interesting words to use about this situation. Through some need they have of their own, they then are in need of placement. Those are the kind of child issues that you're going to predominantly see. Recovery issues are also a part of those challenges and those cases go through a program of recovery from their physical abuse or sexual exploitation. Wouldn't you just love it if every case that came in was just those child issues? Because you could deal with that, right? Those are not going to be the issues that challenge you the most. I'm not saying that you're not going to stay awake at night thinking about them.

Adult issues. Let me give you a little trick that I've found for adults' issues. Every time you go to court, you see certain adults walking down a hallway on their own way to court and you think, "Oh shit, here they come." That's adult issues. There's two types of adult issues. One is systemic. Systemic issues involve the social workers, the court, the investigator, others attorney, all the different people that are involved in a child's case. Many times, we have problems in those areas and with other adults in the case the water gets murkier and murkier. You've got too many things happening. But you have some controls there. You can do what I call taking the system side. Say, "Okay, we need to get together on this if possible." And in some cases, alert the judge. Get together and say, "Okay, we've got a problem amongst us." It's almost like saying, "Because we've got everybody fighting one another and it's becoming personal and all these things. We need to try and get back and focus on what's happening with the children's issues. With what's happening to the child." That's a very hard thing to do. But it's definitely an adult issue. In some courts it's not. And alot of it speaks to how well you work with your judges or how well the other folks work.

How many of you work on the reservation? How many of you work in tribal court systems? In a tribal court setting, many times you have another thing that's involved in the system and you have this in rural areas, too. You have small townness. Then everybody who is involved in that child's life knows the family and they all know each other. They may not like that family and they may not like each other, so you've got these kind of things going on, right? And if the judge is part of that, why you're really in trouble. So you have to sit down and take a look at the issues that are making this an exceptional case. In most cases, I'd say probably about sixty percent of the ones I see, the issues that make it an exceptional case are issues of parenting. That's okay. That's their job to have a problem, right? Can we prevent them from having any more kids ever? It's kind of their role in this scene. So they're just doing their thing.

The parent, if you can accept the fact that the parents' job-and you've got to do this with yourself. I do this about once or twice a day, usually—is to say to yourself, "If they didn't have a problem, they wouldn't need us. If they didn't have a problem, we wouldn't be going to court. So, it's okay for them to have problems." That is what we have devoted at least this part of our lives to dealing with these issues of treatment, issues of management and all that. So parent issues, as frustrating as they may be, are a part of the normal course of these cases, and neglect cases also. So, adult issues, that's probably the biggest issue you're going to find in hard to manage cases.

There are also issues of treatment. The issues of treatment are "This is a difficult case because it's hard for me because I think I need treatment in order to deal with this case." It's like, "I don't know, man." That's right. That's usually what you mean when you say treatment issues. These people need so much treatment that now you need treatment just from being around them. For instance, I'm dealing with a case right now where we have three children that were ritualistically abused in foster care by a Satanic cult. Sexually abused. And so you have minors abusing minors. They were taught to kill animals as part of the rituals. This is really a hard to manage case. Why? Is it because there's something wrong with these kids? Not necessarily. Is it because there's something wrong with these parents? Well, in this case the natural parents are not the ones that abused them. They were abused through the system. They were secondarily abused. But there are times in this case when I feel like I need treatment. So that is a treatment issue. In other words, this case is so challenging from a treatment perspective that it's just hard to deal with. It's hard to go home at night thinking, "Gee, these kids were abused in a way that's hard for me to accept. They have behaviors from that abuse that make them hard to deal with."

Another way to diagnose yourself, and see if it's a hard issue treatment wise, is if you think about referring the case to somebody you don't like. You know, "I know this guy on the other side of town. He could really help you. Yeah, he's an asshole—I mean he's a good guy. And really competent and he was my professor actually." So you've got to watch out for those things. Because, suddenly there you are sitting at a staffing, talking to this person that you don't get along with in your agency about how they could learn alot from this case. And that tells you, "I'm getting burned out on these people. I want to refer them."

Treatment issues are really hard but they're challenging. This one is also an important issue, it's an issue of the system. Okay, these are the legal political issues of the case. The legal political issues are, many times, what you'll find when you're sorting out or when you're struggling with where your heart is in the case and where your mind is in the case. For example, "I want to return these kids home because we're doing reunification and that's what we're doing. We're not going to be doing anything else for six months. And-but I don't know, man. These parents are really bad news. I think there's a foster home in Afghanistan they'd be good at but not here. These guys are in deep trouble." So you kind of have to weigh those things.

Many times you'll find yourself kind of opposed or polarized with attorneys, particularly as an expert witness, this happens. You find yourself polarized with attorneys because they're there to represent a legal political perspective and to advocate for that perspective, right or wrong. That's there job. Okay, each lawyer is not necessarily there to see that justice is done. They're there to advocate their position. And it's up to the judge to see that justice is done. Okay. So you've got to be careful about personalizing things when you're dealing with these kinds of issues. It's their job to advocate that position whether that's the proper position or not. That's between you and God to figure out. But that is not what they may be there for.

Let's take a good for instance on this. Is it your role as a therapist, or as an expert witness, or as the tribal drug and alcohol worker, or whatever because you have a commitment? You're there for all the right reasons, you'll see that your role then must always agree with whatever the tribe's position is in the case. No. Because if you were doing that, I mean you might as well have them write your report, right? Also, if you're doing that in all cases, you lose credibility real fast, don't you? The judge is going to say, "'Well, why even bring him here? I know what he's going to say. He's going to say 'Ditto.'"

So you have all these kind of issues at work. Learn to sort out the exceptional cases. What you're going to find out is that there are no cases from hell. Just like we don't usually find that there are people that are just born evil. You didn't usually just happen. But there are cases that are trying. There are cases that are exceptional. What we would hope to do today is give you some tools to begin to pick those cases apart and then into tangible, workable parts. Then you can begin to manage and treat these cases. I've got some more stuff I can go into or do you want to do a little bit now?

Marilyn Robinson: It would be helpful if you could give us the whole picture and then I could come in on adult to treatment issues. You're going to lay out the whole court process, aren't you?

Man: Yes, we could do that. That would work.

Marilyn Robinson: Okay. Why don't you do that and then I'll come in and do the other.

Art Martinez: Okay. When picking apart these cases, there are some basic things to keep in mind. We're going to talk alot about these. We're not done with these by any means.

How do you begin to section those things out? What are you really doing? You're diagnosing. You're picking people's problems apart and then seeing what kind of a pattern it forms. But now you have a treatable pattern. You have something you can deal with. Not that the guy's a jerk or the judge is no good or he hates Indians. Okay, he hates Indians. How many of you have ever heard the parents say, "Well, the social worker hates Indians." Yes, often. It's an assumption. Okay, we can assume that somebody in this whole scene of what we call the case may have biases for or against Indian people, whatever. Biases are operating there. Part of our job is to not get distracted by those biases. I used to be involved in alot of cases where the worker would tell me, "How can you work with that county? Or how can you work with that worker? Because they openly hate Indians." I've had judges tell me, "I thought we killed all the Indians." Get somebody on this. I've had judges walk out in the middle of my testimony. I've had all kinds of things happening. At one time there was a list put out by the California Bar Association. It has the ten worst judges list. And one year it came out and I was reading it. "Oh, gee, I wonder who's on this list?" At the time, I was actually appearing before four of the judges listed. One of the judges was actually the guy that walked out on my testimony. Later, he was arrested. That's how bad he was. He was arrested for assaulting one of the police officers that was in his court. And what else did he do? Just recently I found out that he's been arrested again. Of course he lost his seat on the bench but he's been arrested again for some other scam he had going. Anyway, don't assume that because people have high positions they're immaculate and clean, right? Because that's a false assumption. You're going to get disappointed.

Man: Question. What recourse do you have when you run up against someone like this?

Art Martinez: What you do is, you kind of pray for somebody else in the room to not be in the same place, right? But they are. And attorneys and other workers tend to, regardless of what they might feel, have a sense of professional ethics and professional competence, right? So you want to be dealing with them on that level. I could have easily stood up and said, "I don't have to take this shit." That would have probably been the best thing to do. But it's something you try to avoid doing in court. I have a joke about that. There's some things you try to avoid in court, okay? Let's agree on this. You don't tell people they're full of shit, okay? You don't lift anybody's dress up, it's not proper. Don't wear blue jeans, okay? I learned that one because some judges don't allow blue jeans in their courtroom. Yeah, there are some tricks like that. Don't chew gum. And the thing is, remember why you're there, not who you are. There's a reason to that. You are there playing a role, a legally defined role, when you're in court. You're not there to tell the judge what you think of the social worker as a human being. They may have blown it in that case but that will be discovered in the way that you paint the picture. These are basic things to follow. Usually, don't cuss, it's not good form.

All right. We're going to come back to how you sort these things out. There's four skills that you want to focus in on. These are very general skills. At some point, one of these four skills is going to pull you out of trouble in a hard to manage case. One is your case management skills. You must always be honing your case management skills, okay? I put that first because it may be the most important skill. Always be working on your professional competence skills. This is your first tool, your first line of defense, when you go into court. You rely on your competence to see you through in this case.

If you run out of professional tools to use in a case, then you fall back to position number two which is what attorneys call finessing it. I call it baffling them with your bull-shit. And somebody's going to call you on your bullshit sometimes so you're on thin ice at that point. Mutual respect, I have respect for all the parties in the room. I have respect for the parents. I have respect for the attorneys. I have respect for the social worker and therefore, I expect them to have respect for me too. I have seen mutual respect, in and of itself, turn cases around. If you have a social worker in a court situation that has racial agendas or prejudicial agendas going on and you stay within your role, regardless of what you might think of them at home, you stay within your role of having respect for them. You treat them on a professional level and you treat the other parties similarly. You can bring the other parties into that. What will happen is that they begin to do the same thing. What will happen is that the social worker, that one party that's not treating everyone else with mutual respect will begin to stand out apart from the others and that's what you want to happen, okay?

So you've got to stay in this role of mutual respect and professional respect in some sense. You've got to stay on that level. If you let yourself deteriorate down, you're going to look incompetent in the judge's eyes. The other skill is to always bring the agenda back to a humanistic orientation. Humanistic orientation, people get all highfalutin, right? The judges are talking legal and the attorneys are talking legal and the psychologist is in there and he's talking, too; he's off in his own world over there and the parents are standing up every five minutes and saying bull-shit. And the social worker is having her nervous disorder there on the side. You've got all these things going on. And as an expert witness, or as any party involved in the case, you don't have to be an expert witness. It's always your role to say, "Stop, wait a minute. Let's talk about this kid. We don't have to get all involved in who we are and what we know and all that business. This is a human being. Is this going to work?" How many of you have done this? You go to court and you see the same reunification plan that you've seen for the last cases.

Marilyn Robinson: They have a standard form that they put out.

Art Martinez: Yes, it's like a boilerplate plan, right?

Woman: Yes. In San Diego county there's a boiler plate plan.

Art Martinez: That's great.

Woman: Yes, and they have check marks.

Woman: They're trying to change that.

Woman: Yes, we're working on changing that. It's about six pages with all these check marks, it's just a boilerplate plan and the same kind of treatment issues, etcetera, come out for every case that I get.

Art Martinez: Yes, it could be neglect or it could be murder.

Woman: We are trying to get that changed in San Diego, as it relates to Indian clients anyway. We want to make it much more culturally related to what the allegations are and what our resources are in the community.

Art Martinez: Do you know why there's a boiler plate plan? Well, the reason is that it's much easier for people to shuffle paper than it is for them to shuffle people. Right? They don't want to deal with all the other people. "Oh, geez, they might have a problem or they might cuss me out or something." Our job is to say, "Okay, well, fine, the plan's got checks and all this business. What are we going to talk about in counseling? What are the real issues of this case? Why does the child need placement?" You'd be surprised how many judges, well, they're doing this, right? They'll look up and say, "Yes, I never thought about that. There's a kid? Where are they?" So you're role in the case is to bring it back to, "Hey, we're talking about people here. We're talking about human beings that have rights, that have children, that are suffering, that are having a hard time in life. And the role here is to somehow help that along. Help them get better. Help them recover from the hand that life has dealt them. Judges will respond more to that than they'll respond to you standing up there postulating about how forthwith and therefore this, and that kind of thing. "And your Honor, sir, and madam," and all that business. They're used to hearing that. It's almost a constant drone that goes on in court. It doesn't matter what they're saying.

Woman: I think, Art, to add to that, in writing a report for the court, I find if I make it very straightforward with really no psychological jargon in it, it helps. Especially from my perspective on that client, I think that such straightforwardness has a way of helping the situation. I had one case, it was not an Indian case, in which I wrote a report stating that the mother had come. She was supposed to have therapy twice a week, drug classes and all kinds of things and she did everything. And I just stated that very clearly. I didn't give any of the other stuff. And the Child Protection Services (CPS) worker, for whatever reason, stated that the case should stay open for another six months. Well, the judge read my report. He said that he did not see why they should clutter up the court with keeping this case open and bringing it back again in six months when obviously, this case should be closed. That was my closing recommendation that the case should be closed. Closed based on all this other stuff.

Art Martinez: Right, right.

Woman: I was told that the CPS worker had said to keep it open for another six months. Whereas, I recommended it be closed and the judge closed it on that basis. I realized it should have been closed because I still see the mother today, and as I said, she's not Indian. She comes by my office periodically. She's doing beautifully and the child's doing fine. So, I think it's important to be pretty clear cut in writing our report for court. I submit mine to the CPS worker and that goes in with her report, too.

Art Martinez: That's very important. Another issue in that case is it made sense, right? When I tell people about expert witnessing, I have a saying that if something is true-because in expert witnessing we deal alot with trying to prove truth. It's what courts are based on. If something is true, it should make sense.

You'd be surprised, alot of people out there say, "Well, this is true, your honor, because this test and then, therefore and all this business," and they've got graphs and everything and you go, "Well, that doesn't make any sense. Your honor, I just sat down with them and we talked and I felt that this is what was going on. So then I checked it out and, in fact, I found that there was some indication of this in tests or some other way in their life history, in the way other people experience them, and I think this explains what might be going on with them," and that kind of thing. Judges can take that. See? "Well, that makes sense." If you stand on your laurels and say, "Well, because I'm the expert and I've got more letters behind my name than God." Then they're just going to say, "Well, who is this dude?" So, relate to humans. Just kind of bring the court's orientation back to the fact that we're talking about people here. People that have rights, people that have needs, people that are struggling in life and people, don't ever forget this one, that have the ability to change. Okay? Ability to change is what we're all about here. But you would be surprised how many times you get into court and, particularly on small reservation communities, you hear the social worker saying, "Your Honor, they had one kid like this and they had another kid like this and by God, this kid's going to be like that." And right under their breath you cannot almost hear them saying, "and their mother was like this and their grandmother was like this. He was a crook when he was thirteen. He's a crook today." So those kind of issues tend to still float around.

You always want to be honing these four skills. If I'm going to go testify in court, I run down this list to myself right before I go in court. I know what I have to say because obviously I've done my homework. So then, it's how you say it. I want to touch on all of those four issues in my testimony. I want to talk about case management issues, I want to talk about some areas that lend the court some of my professional competence so that they can make a better decision, and that might be my professional skills and all that. I want to treat everyone with mutual respect and I want to bring the court's attention back to a humanistic orientation. I quickly go over this list before I go into court.

One additional thing, it's not really a skill but it's just kind of a trick that I've learned, is try to teach the judge something. Many times, teaching the judge a little something will actually help the case. Talking strictly as an expert witness, part of our role as experts is to educate. So we don't want to be coming to court over the same issues. We want to develop some expertise on the judge's part and the attorney's part so that they get an understanding of how these things work. As Indian child welfare workers, your role is to educate. Don't give up educating even if they give up learning, okay? You say, "Man, every time, I tell this same social worker that there's this and that and the other." Just bring that out in your report, educate the judge, bring it out and talk about that. Eventually, the judge will begin to see the same pattern you do and you'll have a talk or something.

Marilyn Robinson: We're trying to divide this up because I don't do expert witness at all. I do what we call case management and I really strongly believe in good case management. I think that's the essence of what we're doing and I think very often we get kind of bogged down, we stop looking at all of the players. We get kind of narrow in our focus.

Now we may all have different ideas about what case management is. For me, I take this client that gets referred to me by both Indian child welfare and CPS and I contact all the players in the drama of which there are many. So we've got our CPS worker, we've got our Indian Child and Family Service worker, and basically we have the lawyer in the case. We might have a lawyer for the child and a lawyer for the mother and then if it's an out of state case, which most of them are that I deal with in the city because the local reservations handle the locally based cases, I will then talk to the social worker at the tribe wherever that may be. Whether it's South Dakota or the state of Washington or Oregon, whatever. So, I'll talk then to the tribal social worker because I want a full picture of what we're doing. Going back to some of the things that Art talked about, everybody is involved in this case and you want to make sure that they stay involved. You want to get everybody's input. And so I sit down and make my notes based on what everybody has told me.

Then, when I work with the client, I get this San Diego county reunification plan and we have our goal of reunification. Now that's my role. My role is not as a child advocate. That's the Indian Child worker's role. My role is to be an advocate of the mother as her therapist. I am her advocate. In most of my cases, I deal with single mothers. So I see myself as the advocate for the mother and I tell her that when I see her because up to this point everybody's been against her. CPS is against her. They've taken her child. Indian Child is against her because they've placed her child. Her child's lawyer is against her. And she may see the tribe social worker as being against her because they're talking about taking the child back under the Indian Child Welfare Act (ICWA). So she's got all these people against her and who is on her side? Again, I try and make it very clear to her that I am her advocate. I am there to work with her but we have to deal with all these people. I let her know that I will be there to help her through this whole process. You may have other ideas about case management but this is how I perceive it. I feel that this is where we really start and that's before any therapy gets done because alot of this stuff we do, basically in the beginning, is not therapy. It's getting all this stuff together and if it's going to court, then we talk to the various people involved but I make all of this very clear to the mother.

Over the past two years, I've also conducted foster parent training. This has been really helpful to me in working with the mothers because I've gotten to know all the local foster families. When I talk to the mother about where the child is, I know the foster parents. We talk about them because-I forgot to put the foster parents in here, too-because she sees them as trying to take her child or children away from her. I want to assure her that that's not the role that we're all here for. Our role is to be her advocate, rightly or wrongly, and we do question that when we do these cases. But that's the initial role that we're all talking about. The reason I do this is that I like to start empowering the mother. Start giving her a role in what's going on because she doesn't feel as if she has any role. Everyboay's acting on her. So I look at that through the whole reunification process as a question of empowerment. Right down to taking that reunification plan and saying, "What would she like to do first?" Not really asking in that sense, but I take that reunification plan, and I write it and rewrite it on a piece of paper. Then I say, "Well, now we've got to start doing something because," and you all work with reunification plans, "they're horrendous." I mean, you just look at them and you think, "My God, if I had to do all that in six months, there's no way I can do it. So, let's start with one thing first."

All these cases involve substance abuse so I start with the twelve step meetings. That's the first thing we want to do. We want to start staying clean and sober and that has its ups and downs. In one case, a single mother was referred to me from out of state through Indian Child and through CPS. Of course, I made good contact with the CPS worker and I worked very well with Indian Child, so she stayed sober for a little while. Then she's go back out. She stays sober for a little bit more. But she goes back out in a traditional kind of fashion. But, we would just talk about this.

Everybody else starts getting angry about these kinds of things. She's not making any progress, and good western trained people want progress to start here and just keep going on and on and on. It doesn't work that way. We all know that it's up and down. It's up and down and we plateau off a little bit. It comes back down. But eventually, she got through a training program. She was successful in it and so she completes that step. All of a sudden, I think the success really got to her and so, she went out on a big drunk for about three days. Then she puts herself in detox. She just walked herself down to detox when she sobered up. From there, she went into a recovery program. As soon as she gets into the recovery program, she has her counselor there call me. I talk with the counselor and I go down and see her. We all work together on this. We get all the players together and we meet at the recovery home. The worker from the recovery home, her counselor, two members from Indian Child and Family Services, the client, the social worker, the CPS worker and myself, we are all there. We sit around the table. We have coffee.

Now this was kind of hard to set up because you've got to get all these people from all these agencies. But I felt in her case that it was tremendously important. Remember, I'm her advocate, so I push for all of us to meet at the recovery house. We all set up a time, we go down there, and we sit around the table and drink coffee. We talk about what we were going to do on her case and we include her in the discussion. It's not like we're all sitting in some office someplace deciding what we're going to do with her and her child. Instead, we ask her "What does you want to do, too?" Number one, she does not want the child to go back to the reservation. They were going to send the child back there and she did not want that child to go back. I wanted her to tell this to all the workers involved. I already knew this, but I wanted her to sit there and tell everybody herself, "This is not what I want." She didn't want the child to go back because there was alot of alcoholism in her family. She said, "Will I take him away and then send him back, send him to a worse situation than the one he's in now? He's in a good home."

As I see it, that's empowerment and that's case management. None of us can do it alone. As a therapist, I can't do it alone. We've got to involve all these people in what we're doing with that client. She needs to be a part of it , or the parents do, whatever we're talking about here since I tend to use 'she'. As I've said, I work basically with single moms and she really doesn't have much support so we give her that support. This support helped her so much that, I'm really very happy to say, she's still sober today. She still has her child, too. The case is not closed yet. We're keeping it open a bit longer but I think that that's where I see whatever role you play in the case. Whether you're the child advocate or whether you're the parents' advocate, or whatever role you play in there, you've got to know what all these other people are doing.

Another thing, I get all the documentation, all of it. If there's been a psychological evaluation done, I get too. The psychologist sends it to me and I go through it. Then, I have this complete file and a complete picture on this client that we're dealing with. I think that with this process, all of us working together, we get a much better picture. We share this information with each other so that we get a good profile and I know that the client feels so much better because of this. I know that this client certainly did, and we case manage the same way on another case. In that case, it was not reunification. Instead, the mother really wants to relinquish the child and she's afraid that everybody is going think badly of her because she want to do this.

By getting all these people together, and there were alot of people involved in that one including adoption people, she was able to tell everybody what she wanted and get their validation that day, too. Our position is "If that's what you need to do, then, yes, we're all here to help you." She found that there wasn't any judgment against her for what she wanted to do. It was okay to relinquish the child.

The relinquishment procedures are in now process and I think that it will be done very quickly. Later, after this meeting she says to me, "I was so scared when I was with everybody. I was so scared." But then she found she didn't need to be scared because we were taking her wishes into account. Instead of acting on her, we act with her. This brings us back to all the things that I talked about earlier, the humanistic point and the respect. You've got to respect the client. For whatever reason that child was removed, in most of our cases it's basically neglect, the mother already feels badly enough. Why are we going to chastise her more for what she's done? Rather, we've got to start building her skills. And yes, she does have these skills. Yes, she is good. So we start to develop those skills from there, I eventually add all the reunification stuff on later.

Basically, we work with a twelve step program. We get her to go to her meetings and then, she usually gets to see me once a week. She can see me more if she wants to. I leave it open. If she needs to come in again, she can call and set up a time. She can just come on in and see me. Then we get into the parenting classes, which are necessary, and anything else that needs to be done in that process. See, I don't go to court. I just work as the therapist with the parents, or parent in most cases. I send my report to CPS and, yes I do keep constant contact with CPS. I really do. I let them know that the mother's coming in regularly. If she doesn't come in but she calls and changes her appointment, I let the CPS worker know that she's really trying. I let them know that she's really doing what she's supposed to be doing. However, we don't talk about what goes on in therapy sessions and I tell my client that. I say, "I don't tell the CPS worker about therapy sessions. I tell the worker that you're here." If it's important, like in the relinquishment thing, I explain why I want a full meeting together. In this instance, her strong issue was relinquishing her child and she did not want to continue with the situation as it was going along. But I got her permission to do that before I spoke with CPS. I said, "Is it alright if I tell them that's what we're going to discuss?" Okay.

So this whole question of empowerment is important to address because it really helps even after they reunify, too. So that's the treatment issue, that's the adult issue, and we've also looked at the foster parents issue. My getting to know the foster parents has really been helpful because, as I said, then I could tell the client, "Well, so-and-so and I talked to so-and-so, and I saw so-and-so at a training I did. It just makes the placement alot more manageable for the client. I just wanted to throw that in here at this stage of the game for those of us working in the field, whatever our roles are, because I have found this to be really workable for me as a case therapist.

After they reunify, we do see the family in therapy. Mothers usually want to come in and bring their children in, too. Currently, I'm working on a situation where I'd like to change that. I'm trying to get the county, as well as another agency, to look at going into the home a couple of days a week in an attempt to empower the mom a little bit more. I think what happens in some of the reunification cases that I've seen is that we give the child back and then we say to the mom, "Okay, here's your kid now. You're on your own." They decompensate very quickly because they haven't the strength. They do well up to this point and, all of a sudden, here's this kid that may have been out of the house for eighteen months to two years.

In this case that we're talking about, a child was removed at six months and the mother gets it back when the child is two years old. That's eighteen months out of the whole developmental stage, that whole process is gone because somebody else has had him. Now, my advocate role here is to do a lot more than just support her. It's not enough for that mother to come in and see me once a week. It's just not enough and I know that. More needs to be done at this stage to help this process. So that's sort of my role in this. Do you have any questions as to what I do or any of the procedures? Okay, so that sort of fits in with what Art does in the court proceedings. As I said, I really don't have a part in that except for my report that I write as the advocate for the mother.

Art Martinez: Part of the expert witness role is also to advocate. The expert witness has this ability. A good expert witness will do this through court appointment. An expert witness must be able speak to the therapist candidly about the issues going on in therapy. And that's very empowering because many times as an expert, your role may be if nothing else, to make sure that the therapist's views get aired in court. The therapist really cannot do that without compromising their relationship with the client. The client, just by the fact that they're there in court, feels compromised in many cases. The therapist feels oogy about it. They feel like, "I don't know, man, if I should even be here." Once I take the stand, I'm obligated to talk about anything they ask me about. But many times, as a person in the field who has a court appointment, you can sit with the therapist and say, "What's going here? How do you feel about this?" You can then advocate some of those views without having to say, "I know this because I've talked to the therapist and they divulged all this to me." Just saying, "As a competent expert in the field, I've touched on these people's lives who quite obviously know much more about this case then I do. They've been involved for five years," or, "They've been involved with this parent therapeutically." In this way, you give the therapist an advantage of being able to have things heard in court that they, themselves, are unable to go there and say. This is an important aspect of an expert witness' role.

What I'd like to do now is talk about our roles in any case. Then we'll be able to sit down and pick apart cases based on that model. All of these pages that we've done, particularly these things, do not forget! We'll be coming back to all of this stuff. These are the 'hows' of how you do this. This is the 'what'.

But let's talk about the ICWA for a moment. The ICWA made some changes in what was pre-existing state law. Hopefully in the olden days, this hasn't really changed much in California, you have the judge. The presiding judge is represented by one of the judges hearing the case. Keep that in mind. It's a kind of legal technical thing. It's probably peculiar to California. Be careful to know who the judge is that will hear the case. Many times they're not judges. They're referees and they sit there on behalf of the presiding judge. So if you're having problems, you may need to involve the presiding judge, although that's not always an easy thing to do. But frequently, you are not dealing with a judge. You may think you are but instead, you're dealing with a referee. The judge is there because by definition their role is to make decisions about what will happen with the life of this child. Ninety percent of the judges that you meet take that obligation very seriously. Most juvenile court judges will tell you that they would much rather be dealing with criminal cases. Because then, we're going to hurt somebody. We're going to punish somebody because they've done something. We just need to decide how much. This is a juvenile case, a dependency matter, which is one of the hardest positions for a judge to be in. Most judges will tell you that. The cases that they lose sleep over are dependency cases. Also remember that the judge is the court. All the atmosphere, pomp and circumstance of court are there to secure the judge's environment. Previously a party to the case, you've always had the state which is the CPS, Child Welfare Services, or whoever the worker is. The county state worker have a role in that case. Their role is, by definition, to protect the child based upon the evidence that they have, and to work out a plan for remediating that case. It hasn't always worked that way but this is theory, okay? The role of the CPS worker is to advocate what they feel are the best interests of the child based upon existing state law.

The "based upon existing state law" part is a little tricky. Many times, you will find that the CPS workers really are not responding to the law. They're responding to what they think or what their heart's telling them. That may not be such a bad thing but it sure gets them into hot water every now and then, doesn't it? Because then they go around the law. They make the law conform to what they think instead of the other way around, instead of making what they do conform to the law. There's a mind set here and that's the reason I don't put CPS here. I put the state, okay? There's a mind set that because they represent the state, we the people, the people bring forth and all that kind of business, they represent the state. They tend to respond only to state law. It's a kind of weird quirk to CPS work. And so you may find that part of your role is to bring their attention, their representative's attention, or the county council's attention to the pertinent federal laws that exist, including the ICWA. They've always been there, right? They have a right to be there because these are the only people that have rights in a case. These four people right here and the judge. .

The parents. Many times even in the best of situations, the parents may have two different representatives, two different attorneys. These are the people that have a right to be there. They have a right to be heard in court and they have a right to competent representation. The parents have their own perspective and their own views on a case. They bring their own issues to the case. They bring their own rights to the case. Their issues, their rights and all of that are designed to legally stand independently from those of the child or the state. Remembering the only one here that has any power is the judge. All of these other folks are powerless and so it's natural for them to feel a little powerless, isn't it? The state cannot take away the rights of the parent. They cannot take away the rights of the child. They cannot take away the rights of the tribe. But all of those rights exist independently. The parents cannot take away the rights of the child, they cannot take away the rights of the state or the tribe. They have a right to representation.

Then you have the child. The child has a right to independent counsel. How many of you have ever had a child tell you they'd like independent counsel? It doesn't usually happen, right? Yes? Well, that's great. I mean if you have a child that's asking for an attorney, you either have an intelligent child or you have a child that's court wise. But that's good. You want that. I mean you want a child that's going to advocate for their own rights. What happens in California courts, the child's rights get represented by the state's attorney. Therein you have a problem. You have a big problem when that happens. I always encourage judges to appoint the child a separate counsel because the child's interest may be separate and apart from the CPS or Child Welfare Services' interests. Who is the client of the attorney representing the state? The client that they identify is CPS, if a deal is swung or whatever. They then go back to CPS and say, "Is this what you want?" The parents' attorney then goes back to the parents and says, "Is this what you want?" The child's attorney's role is to go back to the child and say, "This is what you want." And if they're really competent, they'll go to the child's therapist and say, "Is this therapeutic for the child? Is this in the best interest of what we're trying to do here?" As an expert, you often have to straighten out therapists because they look at the current hurt as opposed to long term hurt."

So, all of this is what existed in the state court before the ICWA. What the ICWA did was add two components. It added the tribe. What is a tribe? A tribe is an independent nation that exists within the borders of the United States. The tribe has rights that none of these parties can deny, because it has rights to its citizenship. The child is a citizen and the parents are citizens, although the parents can relinquish their citizenship if they choose to do so.

Alright. Say we don't want to be members of the tribe anymore. We can't relinquish the child's citizenship too. The parents can't say, "We don't want the child to be a member anymore." Because that's a separate right. It's an inalienable right and the state cannot say the tribe doesn't have rights.

Now we've already said that these people all have rights in the case. The parent cannot deny, take away or relinquish the rights of the state. Moreover, they cannot relinquish the right of the tribe. This is where we get in trouble in these kinds of cases because the battle becomes one between the tribe and the parents. Both talk about relinquishing each other's rights. It's not the tribe's rights that are being relinquished. It's the child's rights. It is the child's right to be a member, to be a citizen of the tribe, that is what is being relinquished. This child is basically alot like immigrant children, so to speak. He has dual citizenship. The child can make a decision about these issues when they become eligible for enrollment but the parent cannot say, "We're going to deny the tribe's right," before the child ever has an opportunity to do that. The parents cannot relinquish the rights of the tribe in that manner nor can they relinquish the rights of the child.

They also have rights, though. Is this an adoption? No? Okay, it's a dependency. That issue classically comes up in adoptions because in adoptions parents have some rights to say what types of homes their children go into. Obviously, they're the ones relinquishing their rights so what happens is that you'll get parents who will come in and say, "I want to put my child up for adoption and I don't want them to go with an Indian family." Do they have the right to put up their child for adoption? Yes. Do they have the right to say that they do not want their child to go with an Indian family? They can say "I will not relinquish my rights to this child unless the child goes into a certain type of home. I want the home to have two parents. I want the father to have a job. I want them to have adequate housing." So they can do some descriptive stuff about the home. They cannot do things that violate the law, like racially descriptive stuff. They can't say that they want the parents to be white or something like that. But those are preferences, aren't they?

Then the worker says, "Okay, I will try to find an Indian family that meets those preferences and then match that with the preferences of the existing law which is the ICWA. Those kind of things can be sorted out. But many times you're going to find that the parents who do not want their children recognized as being Indian, or do not want their children recognized as being eligible for tribal membership-what does that speak to? It speaks to the fact that this parent has alot of issues. It is also a code. A little tag should be put on that; this parent is probably a survivor of abuse or neglect.

Woman: What if the child is from two different tribes and is on the rolls of each tribe?

Art Martinez: Under the Act, the child is qualified because they're eligible for enrollment on either side. Many times it could become an issue, but my best advice to the court in that situation would be to have the two tribes settle on somebody to represent their interests. They might have separate counsel in the matter or it could be resolved another way with the two tribal social workers, if you have that kind of luxury, right? Oh, sure, assuming that the tribes have a social service going on, that they could get together and say, "How do we want to handle this case? Who's going to do that?" Maybe there's one tribe that's within the same county and another tribe that's half a country away. Then the one tribe that's further away would say, "Well, look, you guys handle it and just kind of let us know what's going on. We want to be kept informed."

Woman: I had one case where the mother didn't want her child placed with an Indian family, but through the therapeutic process, I really talked to her about the benefits for her child so that she ended up getting the child enrolled. Yes, it was exactly what Art was saying. She finally did admit that it would be best to have him enrolled because of the potential benefits down the line.

Art Martinez: So it really points to the therapeutic needs.

Woman: Yes. Yes.

Art Martinez: Of the parent.

Woman: Yes, right.

Art Martinez: Let me try to tell you how I frame that just to give you a clue about what might be going on with the parent. When you have a parent that says, "I do not want my child to be recognized as an Indian person. I do not want my child to go into an Indian home. I do not want my child to be recognized as a member of my tribe or anything along those lines. You may be touching something that has gone on and I see this frequently among survivors of abuse, sexual exploitation, neglect, whatever. That they may have been raised in a very abusive situation. There's alot of therapeutic and psychological dynamics I could go into but I'm going to give you the *Reader's Digest* version here. They feel a great sickness within them. It's a great pain. It's something that the environment of culture that's within their family, and the environment of abuse, and the environment of substance abuse are all enmeshed together. They cannot tell one from the other. They all go together, okay? They live that environment and what you live when you're growing up is your experience of culture. Maybe they get placed or maybe they leave that environment but something has happened in that setting. So, they see the new environment that they're in as being healthier. They see that there's no abuse going on.

From the child's side, you take a child from an Indian home where maybe they've been abused or neglected or whatever, and you put them in a non-Indian home. They see two things. One is that the abuse or neglect no longer continues, hopefully. The other thing that they see is that they're no longer with Indian people. So what have we taught them? We've taught them that abuse and being with Indian people goes together. That it's the same issue, see? And so they grow up with that kind of hatred or they despise their own people. Many times, they can recover from that and there's great ability for change within people, but often, the opposite happens where people say Indians are no good and they get some reinforcement of this from life and all those kind of things. They begin to experience that this is an Indian problem. Indian people do this to their kids. Whatever. That's not the case at all, right? The case is that they can't distinguish between the two. Victims of abuse are awful at being unable to discern separation of issues because of that enmeshment that exists in all abusive families and in all neglectful families.

Woman: As long as the tribe has sent something to the state court verifying enrollment and the ICWA is applicable in this case, then hopefully, all of the protections provided by the ICWA—as opposed to state law—are in place.

Art Martinez: Right. But let's take a look at this for a minute. The parents do have rights. Now we've all seen cases where the parents are involved, right? Just think back now, what happens in the cases where the parent has rights but they are not represented by counsel and they're not in the courtroom? Everybody says, "Hey, we don't have to deal with them." They lose by default, right? They are not represented in court. If they don't show up in court, it's like do whatever you want because their rights are not being asserted.

What happens when the tribe's rights are not being asserted? Nobody from the tribe is there. No counsel is there appointed on behalf of the tribe. The tribe is, basically through their behavior, saying, "Do whatever you want." Now we can come in later on, advocating as therapists or somebody involved with the child that the tribe has rights, but if they're not representing their own rights, there's not much to that. The judge can consider that but he doesn't really have to. The state certainly isn't going to consider that because it limits what they can do. So, get in contact with the tribe and tell them, "Get yourself to court, get yourself represented in court or get somebody else to do it for you." The judge has to actually tell the tribe that they have a right to intervene and the right to be represented. They cannot tell the tribe how to be represented. If you send somebody armed with a letter and there's a tribal chairman's signature, or even better yet, a tribal counsel resolution, or a tribal judge's signature stating that this person is authorized by the tribe to represent the tribe in this case, then there's nothing that the judge can say about this. The tribe does not have to qualify themselves in that judge's court. Who knows how much the judge is going to take that into consideration in his mind, right? The judge may be sitting there the whole time saying, "Well, this guy's not even an attorney. What does he know?"

The other option is tribal court. Yes, you can just transfer jurisdiction into a tribal court. The other party to the case, now remember these people are all separate and apart from one another, is the expert witness. This is a newly developed person just like the tribe within the courtroom situation. Now the expert witness has an unusual role. The expert witness considers all of the factors, the positions of these folks here, and they do an independent analysis. Really, the main role of an expert witness is to do an independent analysis. The more skilled that person is in cultural and legal issues of, in this case, Indian children, the more skilled they are in being able to be a competent expert witness for the court. So they have to qualify themselves on that basis because they could be an expert witness that's qualified for something else. Typically, they would be brought in by one of the parties and not by the judge. As an expert witness under the ICWA, the expert witness works for the judge. Do I have the right to fire him then? The judge appointed him. Somebody may have requested that that certain expert witness be involved but the judge appointed him. His report goes to the judge and is submitted to the court on the best consideration of all the factors.

There is another type of expert witness and that type of expert witness is brought in by one of the parties to answer specific issues about specific things. For instance, he might be brought in by the tribe to answer specific issues about the ICWA. He might be an attorney. He might be brought in by the child's attorney to answer specific issues about the psychological damage to the child. Okay, that would be a psychologist or an MFCC, a Marriage, Family and Child Counselor-someone along those lines. But in regards to the expert witness testimony referred to in the ICWA, there are only two such types of testimony: and interpretive. Culturally specific means something like, we want one question answered. For example, "What is the typical living accommodations for your tribe on your reservation." Interpretive testimony is like, "Can you interpret what is happening in the Navaho language so the parents can understand." Something like that.

But in most cases, the expert witness is a second opinion. The role of the expert witness is there so that the court's decision is not made solely based upon the opinion of the state, that there's a second opinion. And that second opinion considers all factors just like the state does, or maybe does. It independently analyzes the needs of the child, parent and so forth and then reports directly to the judge. Their reports go to the judge directly and there's a reason for that. If you ever do any expert witnessing, watch out for this one, if you get called due to the state's request, then you can make that same dotted line over here and write expert witness here. What does that mean? That means that the state's going to pay you and they're going to do some other stuff. Or maybe you're brought in by the parent's attorney. It's really the attorneys that contact you, right? So if you're brought in by the parent's attorney or by the child's attorney, and they don't agree with your report, they have the right to suppress it. They can throw it in the trash can. That's called suppression and the result is that the report will never be heard in court. But they can also threaten you. They can say, "Well, that's not going to go along with what I'm advocating for so unless you can come up with a revised evaluation that's more specific to," then they give you these little code words that they have-things like, "If you ever want to work in this county again, your interpretation will change."

You don't want to play those games, right? So you work directly for the judge. Submit your report to the judge. You put that right on the front, you mail it to the judge and the court clerk mails it out to the all the other parties. These are the parties to the case and these are the people that you will see in court. It doesn't always happen this way. There can be other people involved, for instance, the local Indian child welfare agency might be represented in court. Not representing the tribe for anybody else, but for their own entity and possibly for the foster parents if they have representative counsel. That's usually not a good sign, by the way. If the foster parents have representative counsel, it means that you're getting to a stage in the case where the parents' rights are being diminished and the foster parents' rights are being escalated. That might actually be good. It just kind of depends on what's going on.

Woman: In the past I have found this very intimidating, but everything you have covered is extremely helpful and very clear. I have lots of notes and I know we need an expert now.

Art Martinez: Well, I'm sorry we didn't get a chance to go over everything. Do you feel enabled to sort out the cases that you confront? You know, how you can tell when the threshold's getting to be too much? When you start to personalize it. When you start saying, "God, I hate that social worker. I know they hate Indians. They haven't said anything but I know they hate them." When you start getting those feelings, that's a danger sign that tells you, "Oh, you need to sit down and start sorting out this stuff."

* * *

WORKSHOP 3

ICWA Compliance Procedures

(Friday, January 17, 1992)

Facilitators: Richard Brazil; Jerry Flanagan; Tracy Rogers; Marty Wang.

Richard Brazil: Good afternoon, I'm Richard Brazil. I'm a social worker and supervisor, from Butte County which is in Northern California. Right now I supervise an emergency response unit. I'm also the court liaison and an emergency response supervisor. To my right is Marty Wang, she is a social worker, who's primary responsibility is as a court presenter. She writes petitions for the court and also presents cases in court. And Tracy Rogers, to my far left also does the same. He basically does it for our intake units and Marty does it for our dependency units. Jerry Flanagan is our county counsel—he's actually a private attorney that contracts with the county council.

When Kevin Sanders from the Bureau of Indian Affairs (BIA) asked us to come and do a workshop on compliance, we were pretty honored but somewhat surprised. We apparently send out a lot more forms, for our size, than other counties, so Kevin thought maybe we were doing a better job. We always feel that we're trying to comply with the ICWA, and we try and be real diligent with that and we developed a specific compliance policy. So we're hopeful that we have some things that will help you out today.

It will also be specific to California juvenile law, juvenile courts. We'll do some ICWA compliance as well as some Division 30 related, which is a California manual that we call our Bible, that provides the mandates of what we're supposed to do as social workers in California. Jerry will also go over some court decisions that he's researched regarding the ICWA.

First, I would like to go around real quickly and find out who you are, what you do, and maybe that will help us focus so that this discussion might be helpful to you. We'll start over here. *(audience introduces itself)*.

Richard Brazil: Okay. We all have reasons why we got involved with the ICWA. One of the reasons I did, was as a social worker, one time I had a case that I received as a dependency worker, when I met the mother, she had been missing for quite awhile, and then later she showed up. She told me that she had been going to North Valley Indian Health which tipped me off right away that she was probably Indian. So I started the ICWA procedures. However, it turned out she didn't follow through with the reunification efforts. At that point, we were recommending a permanent plan of adoption. This is an old law case. At the permanency planning hearing, the judge appointed a separate counsel to specifically check into the ICWA status of this case.

What this attorney had found was that at the initial detention, the police officer had put an "I" under ethnicity on his police report and therefore, we should have known at the very beginning of the detention that this child was an American Indian child. As a result, the judge dismissed the entire proceeding and we went through another eighteen months of reunification with this case.

That led us to develop a better procedure for identification, as soon as possible, whether the child is Indian or not. It's through those type of experiences that we've been learning. I've heard twice while I've been here that Northern California counties aren't complying with the ICWA. That's probably true. I've talked with many workers in other counties and found that it's a typical thing; the children have blond hair and blue eyes, so they're not Indian. It was kind of ironic that we were doing a compliance workshop, whereas there are a lot of problems in Northern California in complying with the ICWA.

Jerry is going to go over some court decisions which might give you an idea of what may happen—if you don't follow or what you should be doing to follow the ICWA. We're going to start with that, and then Marty and Tracy will go over some ways that we've developed to make sure that all the proper procedures and forms are followed.

Jerry Flanagan: Included in the packet of materials that you received upon registration, was a booklet. In the back is a copy of the *Holyfield* case from the United States Supreme Court. Has everybody got that? Has everybody read that case? Yes, you were going to say yes, right?

This is the most important United States Supreme Court case on the ICWA for several reasons, not the least of which is it's the only case from the United States Supreme Court on the ICWA. The ICWA was passed on the last day at the 1978 Congressional session. It was passed very rapidly and it was passed over the objection of President Carter's cabinet. On that, they forgot to throw in the funding for one important part of it. Now there's a training and all that sort of stuff. They simply didn't do it at the time.

It took years to catch up. Congress had a very good idea in that the basis for ICWA is very sound and it makes good public policy. But it's a very general law that has some very vague terms in it. As all of you know, who are familiar with the law, it takes years and years for the courts to refine any large, general body of law that they pass.

It's a shame that Congress doesn't go back and define as law, some of the terms that are contained in the ICWA, because it's going to take the courts years to do it. What appears to one person as an interpretation of the ICWA, appears to another to be foolish. And in the various states, in this country, in several areas, that the Supreme Court in *Holyfield* has spoken on, there are a wide range of interpretations.

I'd like to go over the *Holyfield* case briefly, for those of you who haven't read it, and tell you what it holds—the decision on the specific issues addressed by the court, and more importantly what it really means to us. In *Holyfield*, a young man and a young lady who were not married to each other decided that the twins that they were going to have were not going to be raised as American Indians. These two young people lived on the Choctaw Reservation in Mississippi and they decided that they wanted their children raised in another environment.

So they went three or four hundred miles away from the reservation, contacted private parties, arranged that when the children were born, that the children would be adopted. The woman gave birth to the children, four hundred miles from the Choctaw Reservation and within I think, ten days, a final decree of adoption had been entered by the state court. That's a lot faster than we can do it in California. But that's what happened in Mississippi.

The adoption took place on January 28, 1986. Shortly thereafter, the Choctaw Nation asked the Mississippi court to intervene, telling the Mississippi court that they—the tribal court, and not the Mississippi court—had jurisdiction over this matter since the mother and father were domiciled on the Choctaw Reservation. One of the provisions of the ICWA States is that a tribal court has exclusive jurisdiction over wards of both the tribal court and people who are domiciled on the reservation.

The Mississippi State court disagreed and stated, "That under Mississippi law, these children who had never been on the reservation could not be domiciled on the reservation," and therefore, under Mississippi law, the ICWA did not apply.

The matter was taken to the United States Supreme Court, and on April 3, 1989, the Supreme Court some forty months after the finalization of the adoption, overturned the Mississippi Court. That's how long these things take. That's three-and-a-half years to get from the bottom to the top—to decide one adoption case.

The holding in the case itself is a very narrow holding, and it deals with domicile. And as I said earlier, Congress when it wrote this law wasn't very exact on what a lot of the terms in the Act itself meant. There are regulations that go along with the Act. However, in the body of the regulations themselves, it says that they are not binding on state courts. You can file them if you want. This is our best interpretation but you don't have to follow them. So the courts were pretty much left to do what they wanted to do.

The Supreme Court held that for the purpose of domicile, a person has to be an adult and s/he has to have, in a way, a mind-set as to where s/he wants to live. In this particular case, the domicile was the reservation of the mother and father because they went right back to it after the birth of the child. That is where they had lived and continued to live—and where they intended to continue live there.

The Supreme Court found that the domicile of the child follows that of the parents, until the child reaches maturity or gets married. Therefore the ICWA applies, because the child was in fact a domicile of the reservation.

More importantly, it seems than that in this case, there are some principles which the court implies in the language of the decision. One of those was that states are not free to apply their own state law standards to ICWA situations, unless state law will give more protection to Indians than the ICWA does. In other words, you can't relax the ICWA if it follows your laws. The ICWA laws are stricter under the Supreme Court ruling.

Another important undercurrent of this decision was that individuals, the mother and the father, who under civil codes in most states, are free to make these sorts of decisions, thus, the parents aren't free. Individuals aren't free to avoid the ICWA simply because they don't want their children to be raised Indian. The court went into the history of the ICWA and pointed out that the tribe also has a very important, if not equal place under the ICWA with the family. They want to preserve the tribe. And if you allow all the members to simply do as they please, there will be no preservation of the tribe.

So individuals can't thwart the ICWA. Finally, there's a lesson to be learned here for all people involved in social work who have a conscience, and who want to help children. And that can be seen in the result, three-and-a-half years after this case began, after these children were adopted. There's no personal information about the family in this case from the Supreme Court. Let's presume it was a wonderful family, they love the children and the court said you've got to go back to square one. This could hurt the kids. It could be traumatic to the families. But if they had followed the ICWA in the first place, this may not have happened. So the Supreme Court is telling us in their one decision, that this is serious business, we mean it, follow the law or there will be very serious consequences for these adoptive families and the children.

That case took place in 1989. The ICWA was passed in 1978. Since 1978, a number of state courts have written a number of opinions regarding the ICWA, but a small number. For such an important law, there are very few published cases, comparatively, under the ICWA. In California, there are ten or twelve published cases specifically regarding the ICWA.

The decisions of other states, to show you how widely things can vary, just several months ago, in an important ICWA decision, out of the Louisiana Appellate Courts, the court held that an illegitimate child of an Indian father and a Caucasian mother is not an Indian under the ICWA.

That goes against what the vast majority of other state courts have held. Now we have in our legal business shepherdizing, and that means you can follow a case after it has been decided to see if was overturned or appealed. Apparently, that case wasn't even appealed. So now, under at least one appellate decision in Louisiana, in a situation like that, the ICWA does not apply. It's dead wrong, but now someone is going to have to take the trouble to take that question up to a higher court, most likely a federal court, to change the law in Louisiana.

In some areas, regarding families and the ICWA, there are real serious divisions and someone has to come along, I think Congress or—probably Congress or the Supreme Court and solve these problems. It involves cases where there's no marriage, one person who is non-Indian and one person who is Indian, not domiciled on the reservation. Many states have decided that the ICWA does not apply because they look at the purpose of the ICWA to preserve Indian families and to protect those families from intervention when people are coming from the outside and taking the children away.

These courts are finding that where there is no outside intervention, when this child has never lived on the reservation, it is not being taken from an Indian family because the people were not married, they didn't live on the reservation, then the ICWA does not apply. There are probably ten or twelve states that have opinions that say just that.

California, and most of you are from California, happily has a very strong though brief set of ICWA opinions. In almost every case, the decision goes strongly in favor of the ICWA. In a recent California case involving this very problem, *The Adoption of Lindsey C*, there was going to be an adoption of the child by the step-parent. The child was Indian, there was no question about that. His father was a full-blooded Indian and the mother was Caucasian.

The mother and father divorced, and after some period of time, the new husband of the wife wanted to adopt the child. The lower court, the trial court, found that this was rather on a par with divorce proceedings, a custody proceeding between parents, that the ICWA specifically exempts. So the lower court and the trial court—Superior court—found that the ICWA did not apply. This decision was appealed by the father and the tribe. The California Appellate Court just recently held, and this was last April, that the ICWA does apply to adoptions involving step-parents.

So we're taking the strong side on the ICWA in those cases. Those of you who deal in the adoption area as advisers, or more directly, should keep that in mind. If there's going to be an adoption and there is and Indian child, the ICWA fully applies. There was also a case, just parenthetically, that began in 1988 and the court decision was in April 1991, and the child was with a family up until that time. Once again, the child went away from that family.

There was a case In Re: *Crystal K.* that was decided in December 1990, and this involved a family in Alaska, an Indian father. I can't tell from the case decisions whether the mother was Indian or not. It doesn't really matter. They separated in Alaska. She moved to California. They had one child. In California after several years, as happens in life, she met someone else. She remarried and again, her husband wished to do a step-parent adoption. The court in California, which was up in Ukiah, decided that the father had abandoned this child. And because of lack of contact, the court thought that because of this abandonment, it would be detrimental to the child's physical and/or mental well-being in the language of ICWA, to allow the tribe to intervene. The appellate court found that the lower court was wrong in believing that the termination action was a private matter between these people. It found that once again, this was a matter that, because the child was an Indian child, the ICWA was broad enough to cover.

In that case, the court said that some of the other ICWA provisions dealing with proof in court, which is something sometimes we forget about when things seem very obvious to us, that we don't make a clear record of it in court. And that comes back to haunt you and it's probably what happened in this case. The mother made some declarations that the father had been drinking too much and was abusive. And she didn't set up factually on the record, that it would be the facts, so the court could determine if it would be dangerous for this child to go back with the father.

The court made one other holding. The lower court had found that the father didn't have custody of the child during the course of these proceedings. That was another reason for saying that the ICWA didn't apply, because the child hadn't been with the father for five years. This court, which is just an intermediate appellate court in California, found that it isn't simply physical custody that the ICWA is talking about, it is physical or legal custody.

And it was up to the mother then if she wanted his rights terminated, to prove beyond a reasonable doubt, since this was going to be an adoption, that it would be physically or psychologically harmful for the family ties to be kept.

Finally, we recently got the kind of case that we occasionally get, that actually we can relate to, because they talk about facts that we can see where we made an error. The court actually tells the lawyers, social workers, and judges how things should be done. This particular case, *Kalin W. vs. Superior Court*, recently came down in September. This was a case, that if the social worker had been on their toes, might have ended a lot earlier.

Drugs and alcohol were involved, and the mother didn't perform as she should have. She was on the fast track after twelve months, to having her child taken away. They set the two-five hearing to come up with a general plan. That day came and on that day, the mother said, "You know, I'm an Indian." So sixteen months had gone by, and now she informed the court that she was in fact an Indian. So, the court ordered the Department of Social Services to look into this, to contact the tribe.

I presume that the social worker didn't have much training in this area, then went out and made a couple of telephone calls. She called a couple of tribes and they said, "Well, we don't know this person and you're going to have to send us more information, like her tribe number, her registration number." She called BIA on the telephone and talked to somebody there. She couldn't remember exactly who, but she talked to somebody to try and figure out what she had to do next.

She talked to the mother and asked the mother for her tribal registration number and the mother didn't know it either, or didn't want to give it, or was just generally uncooperative. So four months later, they come back into court and the social worker says, "Well, I couldn't find any information about this, whether she's Indian or not." The court then decided to terminate parental rights.

This case was not taken on appeal, it was taken up on a writ. So it didn't take very long. It only took four months after that to get a decision. And the court said, "No, no, no, you did it all wrong." Social workers have an absolute obligation to notify tribes on any proceeding that may result in placement or termination of parenthood. You can't just make telephone calls, and in cases like this, if you're frustrated, if the mother doesn't tell you anything—and by the way—it's not up to her to give you any information, she doesn't have to give you information. It might be easier if she does, but she doesn't have to.

If you think there's an Indian child involved, you've got to go out and work on it. Contact the BIA because even though you've thrown up your hands in so many words, you have to throw up your hands because you can't find a tribe, that's what we pay all these people so much money for at the BIA, is to help you in cases like this, to find tribal affiliations. If they can't find it, they can ask for an extension. If they can't find it after an extension, then maybe we will get on with our court business. But they've got the resources at BIA to help you and that's exactly what you should have done.

So in this case, they were sent back to square one. They said you've got to send out your registered letters to the tribes. You've got to specifically inform them that they have a right to intervene. You've also got to tell them what that means. You've got to give them identifying information and give them time to react. If you do all those things, then you're not going to have the courts on your back. And, the children aren't going to be placed and placed, and then taken away again.

I think the bottom line from the few cases that we've had out of our state court and at the United States Supreme Court; they have given us a fairly simple message if we want to listen to it. Even though it's not perfect, there's enough information in the law itself, the black letter law and the guidelines that if you simply follow it, in every case, you'll never get into trouble like this. There may be troublesome cases, but you should be able to work your way through. So I'll turn it the discussion over now to the social workers who will tell you what we do in Butte County to have such a perfect record.

Richard Brazil: Basically what we want to do, Marty and Tracy will be showing you what you need to do first of all. Identify the Indian child and follow the procedures and most importantly, follow it through and follow-up. Marty Wang will go over some of our Butte County procedures. You each can develop your own procedures. You should develop your own procedures and forms, as well as the state required forms. I made-up a packet of things that are included in our procedure, along with some of the other court decision summaries that Jerry talked about, as well as some forms that we use. Also included are the state mandated forms and the California Division 30 Regulations which define the ICWA at the state level, and what you need to do.

Marty Wang: Tracy did you want to jump in here?

Tracy Rogers: The portion that I was going to present is the Division 30 Regulations. Division 30 Regulations are fairly specific in California. What Division 30 Regulations do, is mirror what the ICWA procedures are. At this point, I would like to say that many of the people that are here today, are in the situation of having to tell other social workers, in other counties, what their jobs are. Is that not true?

What I have found in the past where we have some problems with following the ICWA procedures is that we have an Indian community out there who get a lot of phone calls from different counties in California. Often they expect the tribal members to tell them what to do, and how to follow the procedures in the ICWA. The guidelines that the state uses are very clear. And again, what it does is, it pretty much mirrors what the ICWA procedures are, and it's in Division 30. Division 30 is not something that a lot of the tribal members or communities have, it's not really their job. But they often find themselves in the position of having to help explain to the social worker what their job is, and how they should follow the ICWA.

The social workers should be following both the Division 30 Regulations, as well as the ICWA. Again, they mirror each other, however it has a little bit more of an explanation on how to these procedures should be applied. So, rather than just being real dry and go through the Division 30 Regulations, they are included. Those of you that do work within the tribe and in the Indian community, it would probably be helpful for you to have these available to yourselves, in case you need at different times, to guide social workers along.

Many times I talk with other social workers and I think we've heard in this conference that the social workers themselves don't realize what they should be following. So you could also point them in that direction. We would also be more than willing to talk with anybody if they wanted to help develop some procedures for their own counties.

Richard Brazil: For those of you who don't know what Division 30 Regulations are, in California, the state puts out these

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regulations that tell you how to do your job as a social worker from emergency response (ER) programs, family maintenance, permanency planning, even adult services; homemaker and the GAIN program here. It also tells you everything you're supposed to be doing, from how many contacts you're supposed to make, to how soon you're supposed to do it, what plan you're supposed to make, what services you can provide, and it has a specific section in these regulations for Indian children. The force behind this is, that if you're not complying with these regulations, you don't get the funding from the state. So it's also fairly important from that perspective for county welfare departments and social workers to follow these regulations.

Tracy Rogers: Right. And in going through those, I was trying to determine what I could be helpful with in talking about Division 30 Regulations. Again, just do your homework and read them if you're a social worker. If you're working within the Indian community, make sure that you have a copy of the regulations, so you both can briefly go over them. A lot of it is repetitious within the programs, within the emergency response, and permanency planning areas.

One thing I would like to point out is that a portion of the Division 30 Regulations talks about the identification procedure. Early on, one of the things that social workers often have a difficult time with, is identifying whether or not the children are going to be enrolled or eligible for enrollment. Only the tribe can determine that. Many times when you're out in an emergency situation, and tempers are hot and you're in a crisis situation, it's real difficult to sit down and talk in order to find out whether or not there's any Indian affiliation in the family at all.

So the follow-up becomes real important. And I believe Division 30 Regulations now say that if you don't at least get a tribal affiliation in your questions, in your investigation of the family, then you can assume that the ICWA does not apply. That's not necessarily so. If you have an indication, for example, if you're a social worker in a county organization, if you go out to the family and you talk with them and they say, "Yes, I think there is some Indian affiliation in our family, but it may be a generation or two back, I don't know what the tribe is." Do not assume from that answer, that it won't apply. You want to continue on.

In my conversation with Kevin Sanders, he also reiterated that. He said, "That's when you want to contact the BIA, and BIA has further resources that they can help you with." At that point, your case would be identified as pending. At some time, Kevin said, "The BIA would return a letter to you to indicate that no, the ICWA does not apply because we don't have sufficient information at this point."

Question: Isn't it the case that the BIA has a large backlog of cases pending just on this issue of identification?

Tracy Rogers: Kevin Sanders, in our conversations, has pretty much assured us that that's going to change. We were falling under the same kind of problems also. We would send in our regular required forms and expect to have an answer for the court in a fairly short period of time, and then we would find out that we'd be, five, six months into our procedures before we ever got an answer back. So, I think that's going to change with Kevin's help and I think you'll be seeing quicker responses.

Woman: I work for the BIA, and I do the research that looks into problems of identification or tribal enrollment, and I also try to get right on it. But often times, we find that the request you send us does not provide sufficient information and that you don't include a birth certificate, we therefore have nothing to go on.

Tracy Rogers: Marty will talk a little further on that. That is one of the things that I think you all hear about all the time, and it's one of your major complaints. We heard that loud and clear five or six years ago. On a personal level, it's always been my job to prod the social worker to continue to search for the information to provide to BIA, that will enable them to then go and find out whether or not this child is an eligible tribal member.

So, as social workers and as workers in the Indian community, that's something that we can even take on as an individual task—to continue making those efforts. It is also part of the three things that we talk about. The identification of the children and then the procedures, following the procedures and then the follow-up. It's real important, even in our county, where we're proud of what we've done, we're still making continued efforts to do all three steps. And we've talked, even at this conference, on how we're going to do that, to improve how we do it. But the information that you provide to BIA, that's the way you find out. That's the way you get to the tribe.

Woman: What happens if you're in a county that is so large that you have difficulties, and you're looking at a birth certificate search of four-to-six weeks. In the meantime, do you have to answer inquires from the BIA?

Richard Brazil: There's two different procedures there. The first thing you do is, you notify the tribe. That does not require a birth certificate. Okay, that gets the process started, and lets the tribe know that we have a child that may be one of their tribe members, and they may want to participate.

The second part is to confirm whether or not that child actually is an Indian child. That requires a birth certificate. And so when you get our initial forms, you don't need a birth certificate to get the ball rolling. But at some point, and Marty's going to cover this, you need to verify. Because in our county, it's different, and a lot of you work right on the reservations and in the Indian communities, and you know that the people are Indian. They've got their certificate right there or their roll number or whatever.

In our county, very seldom do we get a clear cut case. Sometimes they don't even know the tribe. So we've had a problem, and we have a lot of follow through to get a determination of whether or not this is an Indian child.

Question: What about those who are unsure if the child is Indian?

Tracy Rogers: I talked to Kevin Sanders about that the other day. The ones that don't know what tribe, they heard that they had a grandmother that was part-Indian but they don't know what tribe. We thought, well how can we say, "This is an Indian child." What Kevin suggested is that you go ahead and send the notification of involuntary proceeding. They obviously, will not be able to find a tribe or to verify the status, however that way you'll have a record. If at some point, the parent or the relatives tells her what tribe it is, then you can file an amended petition or follow through with the proper forms.

If you get a record back from BIA that they can't find a record of this person, you can then proceed, assuming that the ICWA doesn't apply, until you get information to the contrary.

Richard Brazil: Well, the point I hear you making is that this is something that each department, and especially the county departments, have to work on internally, that you have to insure that internally, everybody realizes the importance of the identification and follow-up. And that's where it's at. That's where everybody is going to get much better at this. Just by doing that because everybody, when the emergency response worker is done with their portion of the case, depending on how you work in your county, a lot of times it gets dropped.

The next person picks it up and they look at the case, and then they look at the petition, and they don't see a 319 in there, they don't see anything on the petition that identifies this child as may or may not be eligible for enrollment. Then they forget about it. That's where we have the problems Mr. Flanagan was talking about. You have somebody come in later on down the road and they say, "Oh yes, I told the original worker that somebody in my family was a member of a tribe. Nobody ever asked or said anything and all of a sudden now, you're talking about taking my child away and I want my child to be placed with a tribal member." And so you've got this big gap and it's our fault. It's our fault for not having those internal procedures dealing with the identification and the follow-up process within our own counties

Marty Wang: I would like to thank Richard. He's the organizing force behind the package and behind the training that we've had in our own county. He seems to be our ICWA expert, with the exception of course of Jerry Flanagan, who does all our legal research, who is our legal expert. But we need to thank Richard for putting all of this together.

I also wanted to personalize this for myself because I've always felt that—I started out in Child Protection Services (CPS) as an ER worker and that was always my first love. I'm aware that when I go out and do an investigation, I would need to determine whether or not there was Indian-heritage or Indian cultural affiliation within a family. It was always really awkward at 2:00 A.M.—with people crying all around me and in crisis—to throw in, "By the way, are you an America Indian or is there an American Indian background in your family?

People would always look at me really strangely. There have been maybe two people, in my entire experience in Butte County over the last seven years, who have said, "Yes," and they're really clear. For the most part, people are real confused, and say, "My children being taken away, why are you asking me this?"

I wanted to share that it's something that I've struggled with. And after being here for a little bit, I'm starting to get it and I feel a little bit slow. But then sometimes it takes awhile to really have things become a part of us. You can know the law, but to really understand it in my heart, has taken me up until now to realize that it's really important for children to be placed, if they're not going to be with their parents, to be with families that are going to be sensitive to these children's needs.

And it's not just Indian children, but any child. You know, we look for homes for children that we feel they are going to be comfortable in, homes that they will be able to feel safe and nurtured in. It's finally dawning on me that I'm not asking about Indian status just because of the ICWA law, though of course that's initially why I started doing this, but also because these children have special needs, and they too have a right to feel nurtured and comfortable, and to feel that they belong.

I made a promise to myself that when I'm out doing my ERs in the middle of the night, that when I'm talking about this, I'm going to talk about it in terms of placement issues rather than strictly your cultural background. Perhaps my approach can be more, that it's necessary that the child be place outside of your home, and in order to help me place your child in the most appropriate home, I need to know some things. I'm hoping that this makes me a better worker in American Indian populations. So that's my confession.

Woman: What about the issue of tribal enrollment. We have come across children who are Indian, but may not be eligible for tribal enrollment, or we don't know which tribe the child is enrolled in?

Marty Wang: I've had a lot of families say, " Yes, I think there's some Indian background." Some of them know the tribe. Very few know about whether there is enrollment or membership. And a lot of them don't even know the name of the tribe. It was as Tracy described, "Yes, I think that I had a relative, a grandmother who was a member of an Indian tribe, but I don't know where she was born. I don't know the name of the tribe." It's very difficult.

Tracy Rogers: Further, the attorneys need training too. We're still working on training the people that are involved in this stuff. And again, I think if everybody takes on their own personal goal in this and then spreads it out to the people that are around them, it really is very simple.

I wanted to expand a little bit on what you were talking about there. I was trained in the ICWA by Art Martinez. It just was real natural there. In that particular community, you're so close to some of the traditions. I mean they are going on weekly. So, when we had a child, not only was it easy to identify the child, the child had a role number almost tattooed on his forehead. It was that easy and obvious, that if I didn't know, there would be somebody in my office that would know.

Coming to Northern California, even though there is a sizeable Indian population, we run into people that are like what you are talking about. There may have been a grandmother there who at the time, because she was hauled off the reservation and sent to school in Los Angeles, she comes back and thinks, "I'm not going to tell anybody I'm an Indian." So then there's two generations of people who may have hidden their Indianness, and they haven't followed any traditions whatsoever.

So now you have a young twenty-year-old couple and you ask them if they have any Indian heritage and they say, "Well yes, but...," they haven't participated in an Indian ceremony in their whole life. Their parents didn't and so it's real different. A lot of the folks that are here today, are really in tune with their tribes, their customs and are practicing their ceremonies. As social workers, we're also dealing with them.

So that's what makes it difficult too. So you've got the training problem, you have that social situation going on out there that makes it difficult, you've got this massive amount of paperwork, you've got attorneys that aren't understanding, judges that aren't understanding. So we've got our work cut out for us. And you know, we've been doing this for twelve years now. I feel like we really are making a lot of progress. But, it's going to take a lot more work in helping develop procedures for your own departments and your own areas.

Jerry Flanagan: Lets take a look at where things are going, on the legal side of it, because this was a law passed by a liberal Congress and a middle of the road Supreme Court. And now, we are living in an extremely, I don't know if you've noticed, conservative America. The composition of the Supreme Court has changed almost completely since this last ICWA case in California, but it may be a long time before there's any uniformity in America on this law.

Marty Wang: Okay. Real quickly, the forms section in your little packets, I don't want to be redundant, but I'll just tell you what we use the forms for. We have a checklist that's available for social workers to use just to make sure that we've done everything we need to do. I look at cases. However, I don't see the forms used consistently, but I know some people use them, some people don't.

When a child is detained, we have to staff the case with our court officer who is going to write the petition for the court. At the time of this staffing, we always ask, "Did we determine whether there is any ICWA status?" If they say, "Yes," we ask for the tribe and any other information we can get. We fill out the State of California Form 319. That's the notice of the involuntary action, and then send it off to the BIA and to the tribe, if we can. The social worker then needs to follow-up on the familial information, so that if they don't have the role number or their registration number, we can try to get that.

The first form, the checklist is a county form that Richard probably developed. I haven't asked him about that. If we didn't have personal contact with the parents, we can—and it's not going to be easy to do quickly, or we sometimes can send this letter with the third form, which is the questionnaire. It's just a county form and it asks for basically the same information that we're going to put on the state form.

We ask if they have Indian ancestry or not. If they check no, we have them sign it and we stop there. If they check yes, then we're going to try and get the rest of the information so that we can determine whether or not they qualify for an invocation of the ICWA.

Tracy Rogers: Do all of you have directories of all the tribes in the United States. Does everybody pretty much have that. That is something that once I got to Butte County was really helpful. But a lot of counties, I think, don't have that. So when we're making those contacts and we're trying to follow-up like somebody mentioned here, you may not have a response back from the BIA, you can follow-up with telephone contact with the tribe, you then have a real good idea of whether or not the child has been identified, whether or not they're eligible, and whether or not the tribe is going to have an interest in them.

Marty Wang: Getting back to this, if we think, from the information that we initially gather, that there is Indian status, and of course some of this applies when we are looking at placing all children, we're going to look first of all, at whether there are relatives who are willing and able to provide for this child—and we'll go with a relative first. That's a mandate, whether it's an ICWA child or a non-ICWA child. But the difference with the ICWA child is, we think, that if they fall within the ICWA or if we just think that there's Indian heritage, we're going to treat it all the same.

And I know that the law says that after the relative, we have to look at a home licensed or approved by the tribe. We don't have any of those in Butte County, and I don't even know that we have any in Northern California. That's my ignorance I have to admit. So we do have some identified Indian homes within Butte County, and we try and place the children there pending further information or better identifying information. And if we can't do that, then we're going to place them in the most appropriate foster home we can.

Woman: Where are those foster homes located?

Marty Wang: All over Northern California. In terms of identification and looking at what we need to do next, we look at the placement issues. The hard part is when we haven't done our job, and as Jerry described, we're well along in the adjudication process and here's a minor who is at a permanent planning stage, and all of sudden the ICWA rears its head. And you know, we're looking at our track record. We then question whether we were we really diligent, did we follow the law, or are we going to end up going back to court at a later date?

Woman: We've had cases where a social workers just gets so involved that s/he will refuse to share information on a particular case.

Marty Wang: I think that sometimes a social worker feels like they own a case, it's hard to share some of the responsibilities. And I'm not saying that it's right, but I've seen that happen. I think you're right.

Woman: I have found that most non-Indians do not want to acknowledge, or do not understand the concept of an extended family as it exists in Indian society.

Tracy Rogers: Social workers also have a hard time understanding the concept of the extended family in the Indian community. And many times, you'll have to talk and explain to them, what that concept really means, and how in a traditional Indian community, the whole community owns the child. Again, in the other county, if that was made real clear to me and there weren't any problems, generally I didn't have a hard time placing the child, because tribes usually take care of their own. So if this child had a good rapport and a good relationship with someone who they thought was their extended family, that was real easy. It was healthy for the child, it was healthy for the community. No problem.

Richard Brazil: The Act does allow for the tribe to define the family, because some tribes define it differently. We've had that come up one time, and we let the tribe determine whether that person was a relative within the kinship structure of that particular tribe.

Tracy Rogers: We're getting to the point where we're losing all the problems of what used to be a real adversarial situation between the county and the state welfare people, and the Indian community. At one time, it was my understanding, at least, I've read, it was real adversarial. It was like there was a fight going on.

And now it's become more and more of a cooperative effort with more understanding on all sides about what we are trying to do. What we're trying to do is just to maintain the cultural heritage that is so important to Indian people.

Richard Brazil: Its something we just have to do it. And the more you do it, the more used to it you get. Just like anything else in your job, the ICWA has to start becoming a priority. Our workers haven't seen it as a priority yet. I think the ones that do see it as a priority are the ones that have gotten burned by it. And I'd hate to have that be the thing that motivates them. So we try and let them know that this kind of thing could happen, if you don't comply with the ICWA. It is important, it isn't just a game.

Woman: What about children in need of treatment, medical or psychological?

Richard Brazil: That's our next task in our county. Make sure we do that. We didn't address the treatment issues of compliance with ICWA here today. We're aware of them and we will address this issue in other workshops, hopefully you can attend one of those.

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WORKSHOP 4

More Difficult Casework

(Friday, January 17, 1992)

Facilitator: Art Martinez, Ph.D, *Clinical Supervisor,* Tolyabe Indian Health Project, Family Services Program

Art Martinez: In any type of casework, particularly difficult cases, you must be aware that often there is something within a case that you react to. It could be many things. It could be the number of people involved in the case; it could be the horrendous circumstances of the case; it could be that you have a dislike for somebody that's involved in the case. It's hard to manage because we have just one social worker and I don't get along with him, whatever. So, as in all good case management, what you're going to need to do is, you're going to need to be able to sort things out into workable components. Get an understanding for what is going on with your case that makes it so hard to deal with.

We can call it a lot of things. We can call it a difficult case, we can call it a hard to deal with case, but really what we're talking about is a case that for some reason is exceptional. In essence, aren't they all? Every case is difficult. Every case leads us to see things we would rather not see. They're all taxing and to understand that, to reframe it in your own mind so that it is an exceptional case rather than a difficult case is an important step. When it is an exceptional case, it means that this is a case that actually may be interesting. It is also a case that for some reason stands out amongst the array of cases that you may be dealing with. It is also a case from which you have a great potential to learn something from. Why would I say that? Well, I would say that because that case challenges your issues. Somehow it is very challenging to address difficult issues.

So the first thing you need to do is to reframe the case in a way that makes the challenge tangible and in a way that you can get something out of it. If you lose the capacity to do that, then that is a good diagnostic indicator that something's happening with you and you need to regroup. Maybe you're getting burned out. Maybe you've seen too many cases like this particular one. Maybe you are questioning whether you belong in this line of work. Who of us does not do that? But this then makes it an exceptional case.

Let's sort out the issues of what makes a case an exceptional or difficult case. Begin to think about cases when you sort things out. Ask yourself: What makes this a challenging case? What are the child issues of the case? Is it exceptional because of the child issues? Child issues would be things like: This is an exceptional case because of the treatment issues that have to do with this child. Or the horrendous level of abuse that has happened to the child. Or if any of you have ever worked with teenage placements, the fact that the child keeps changing their mind about where they want to be.

So sort out the child issues. Nine times out of ten you're going to find that the child issues are really not what makes it an exceptional case. More often than not, it is the adult issues. The adult issues really are issues belonging to the parent and issues belonging to the system. So learn to separate those things out, otherwise you get the child issues and the adult issues enmeshed with one another.

Male: Could you say that again, nine times out of ten, child issues are really not what makes it an exceptional case. More often than not, it is the adult issues?

Art: They child issues are not the thing that makes it a difficult case. It's the adult issues. Let me expand on that a little bit. An adult issue would be something like: It's a very taxing case because you've got three or four social workers involved, all of whom disagree about what should happen. Or it's a difficult case because you're working with a particular social worker that you don't get along with or have oppositional views with. Or because the way that the system, the people within the system have handled this case, maybe they've kind of botched the case so that too may be an adult issue. When you look at the whole array of people involved with this child's life, it is the problem of the adults involved with that child's life that makes it a challenging case for you.

Female: Do you include parents?

Art: Yes. It may be that this parent is very hard to deal with, that the treatment issues of the parent are very hard to deal with. Let's boil that down a little bit more. If you have adult issues that are issues with, let's say social workers, the judge, whomever they might be, the county council, then that is a systemic issue, isn't it? Systemic issues are very hard to deal with but that's part of our challenge, to try to treat those issues. How do you do that? Well, you get the system together, right? You get the folks that are the participating adults and you get them together and you begin to process what avenues of treatment you have in order to get that system to work together, to be more realistic maybe about their expectations, to become more we're talking about is a case that for some reason is exceptional. In essence, aren't they all? Every case is difficult. Every case leads us to see things we would rather not see. But they're taxing and to understand that, to reframe it in your own mind as being an exceptional case rather than a difficult case is an important step. When it is an exceptional case it means that this is a case that actually may be interesting. It is also a case that for some reason stands out amongst the array of cases that you may be dealing with. And it is also a case that you have a great potential to learn something from. Why would I say that? Well, I would say that because it challenges your issues. Somehow it is very challenging to address difficult issues.

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Female: Do you include parents?

Art: Yes, It may be that this parent is very hard to deal with, that the treatment issues of parent are very hard to deal with. Let's boil that down a little bit more. If you have adult issues that are child centered in the way that they handle the case. Whatever that issue might be, begin to process with them. Many times you can do that by bringing all the folks together but many times you cannot, so what you're going to need to do is you're gonna need to be involved with many of them in a consistent way. That is treating the system. Big job, isn't it? That's a big job to take on. I think that the child is worth it in most of the cases I've been involved in. The parent, if the parent has issues, that's also an adult issue. It's an issue aside from the issue of child. If the parent has an issue, it's easy to get frustrated with parents, isn't it? Well, what I tell my workers that I've supervised in the past is, that's their job, you know? It's their job to have the issue and it's our job to try to help them. If they didn't have those issues, we wouldn't be here. We wouldn't be here together talking about these things. So if we can just accept that the parents are going to have issues, that those issues are going to be very hard to deal with, that they're going to be very hard to manage, that it's going to be hard to get compliance and all those things, well then, that's kind of the nature of our work, isn't it? That's why God put us here, to have some patience with these people. And if we can accept them, then every parent that I'm involved with, in a dependency matter, is going to have issues.

They're also going to have some compliance issues like, they have problems with trust, they don't want talk about their feelings, or that they go to therapy only because the courts required them to go to therapy. All of these things then become a much more tangible thing for me to deal with. I can accept them a lot easier than I could before. And they'll define where that goes from there, where that process goes. So learning to separate the adult issues out is critical. Many times, for instance, you have a social worker who is so frustrated with the parent that they really don't belong in that case. They have a history with this parent. So you may need to refresh them, right? Refresh them, go back to square one and say, "You know, isn't it wonderful that God made people like this parent? They allow us to do what we do and they, of course, push that social worker right off the edge. You take the adult issues and kind of reframe them in a way so that you can help somebody. Otherwise, we might as well just pack it in, right? So adult issues begin to section out. Okay, these are adult issues, adult issues of system or adult issues of parent, okay? Also, you have treatment issues. Treatment issues can make a case very challenging. And a treatment issue doesn't necessarily mean that you are the person doing the treatment. It can be a treatment issue because you have a hard time dealing with the fact that children can be abused that way.

You have a child that's been ritualistically abused, that's been severely physically abused. That brings up a lot of stuff in you. That's painful. We were not put together to be dealing with these kinds of problems every day in our life. So we need to be aware of that. That's what makes it a challenging issue. That there is such a need for treatment and that there's so much wound there that we pick up on that wound. Once you separate that out as a treatment issue, you begin to do the two courses of treatment: deal with it in yourself, find some way through either your own therapy supervision or other releases. Healthy releases.

That's one side of it and the other side is to get those people, particularly that child, the help they need. And in a lot of ways that's going to help you just as much as your own work. Also, a case can be made exceptional by the legal political issues. That's a lot of what we deal with. Legal political, perhaps involving the ICWA with which they won't comply. It's a little bit like butting your head against a wall. But over a long period of time, by retraining people and getting group support, like we're all doing here today, you become more tolerant of it, you begin to reframe it, you begin to get some successes. You begin to say okay, this is a political issue, or a legal issue of noncompliance, or of one attorney asserting a position that is really frustrating to deal with. And then that allows you to say okay, I know that I'm going to be butting my head against a wall on this issue but while I'm doing that I can still attempt to have successes on these other levels of treatment and other levels of concern. In most cases that I've been involved with or that I've perceived as being difficult or exceptional cases, those issues have been the main source of problems. So if you can learn to kind of section those out and make them stand on their own, then they become something that you can deal with.

Otherwise, those issues begin to overwhelm you and as soon as you get overwhelmed, you begin to sink into a hole, right? And the sooner you do something about it, the sooner you can get out of that hole. But the longer you wait, the further you sink. It's a little bit like, well we talk about protecting children, so this is a little bit like protecting yourself. The longer the abuse goes on, the harder it is to undo. Does anyone have any questions about this stuff or want to talk about this? I'm going to kind of go through this stuff fast so that we can get to cases. But we'll come back to when we sort it out of our case discussions.

Four Tools

These are areas that you are always going to be growing in, so don't feel like you have this licked at any point. First, you're going to hone your skills in all of these four areas. That's going to give you some tools to work your with. Think of it as though you're trying to punch your way out of a paper bag, okay? You're not always going to be successful with your first blow, but given enough tools and enough skills, you're eventually going to see some light.

Case management is absolutely critical in handling exceptional cases. Case management is kind of the pivotal point upon which all the interventions work. Without case management, we become a dysfunctional family and begin to live that out in our own ways. Learning how to sort out cases, how to develop a team of therapeutic approaches for a family and for a child is crucial in case management. The other thing that is critical in case management is that someone needs to take control of the process and most times, when you see cases break down, that's where you'll see a breakdown. For example, you have the social worker, she's doing her thing; the Indian child welfare worker's doing their thing; the therapist is doing their thing; the expert witness doesn't know what the hell's going on. The judge doesn't have a clue either. All the different parties involved in the provision of care in this case are not coordinating with one another. Moreover, no one is taking ownership of that process. No one will say, "Well, it's my job to get everybody together so that we're all headed in the same direction."

Often, the one that we critically leave out of that process is the parent. The parent and maybe even the child. Your role, your first step in evolving things in the right direction is to first take some level of ownership over that process, to say well, you know—How many times do you think this? Well, it's the social worker's job to do that. Well, the social worker's not doing it. She's got about fifty other cases that she's also not doing it on, so nobody is taking control of the process. That's an assumption that you take going into the case. So you take control of the process. There's no rule that says you can't. You step in and you say, "All right, let's get everybody together." Bring definition to the process and that will help the coordination. Because then we have people all sitting in the same room, or at least coordinating with one another, with you as the pivotal person. As an Indian child welfare worker, if that is your role, that gives you a tremendous amount of power to encourage compliance with Indian child welfare things and so forth. It's a little bit like saying, "All of these people suffer from being scattered, right?

They suffer from "Oh God, I've got fifty cases, I don't know what to do with any of them. So if you can just bring them together and say, "Look, let's get together on this one case and I think I can show you some ways of dealing which will help with the others.

Now, you're answering some of their needs and that gives you a great amount of power in conducting what direction that case will take. So, case management is a critical point to always be developing around. You also do it with your professional competence, right? You always want to develop confidence in your profession. If you do not have competence in your profession, you resort to the B&B solution, which is, baffling them with your bullshit. Eventually somebody's going to call you on that, so your professional competence is critical because those are the finely honed skills that you rely upon.

Professional competence can mean a lot of things, but it is one of the foundations that you stand upon in order to provide services in a way that gains the trust of all parties involved. More directly, as both a witness and someone who's done a lot of expert witnessing, these four things are ways that not only assist you in the case but they give you a lot of credibility in what you do in the case. So your ability to come in, and not just necessarily be an outside observer or a complainer about what's not happening, but to get in there and actually do something this assists all parties involved in honing out this case.

The other way that you do it is through mutual respect. If you are always functioning from a position of mutual respect for all of the parties involved, most importantly respect for the parents and respect for child, then you have a great deal of credibility in what you do, don't you? Let me tell you a thing that I've seen happen in many courts. How many of you have ever heard of transactional analysis in parent and child communication? Many of us, good. You will have a social worker that is hostile, that does not necessarily appreciate the fact that you're there, that does not agree with you, whatever. The social worker may have his or her own feelings about native people and it's very tempting to get down and dirty on their level, to get right in there and say "Well, they're no good," and then they're saying you're no good and you have this polarization going on. But if you can stick with your professional role and act and react out of mutual respect for that person, whether they're demonstrating it to you or not, it's very easy for all the parties involved in the case to pick that up because they kind of stick out like a sore thumb, don't they? If you have everyone kind of working out of professional and whatever respect for one another, including the parents, but you have this one person that is shouting down the walls, well this kind of makes them visible in terms of what's going on with them. So you always want to question yourself on all these issues. Am I doing this stuff? Is this okay? The last thing that you want to do is, you always want to bring a humanistic orientation to what you're doing.

Let's take a look at these four things from the role of an expert witness: If you go into court—you're going to testify in court, right?—You sit down in front of the judge, and I literally say these things to myself before I go into court. There are four areas I wish to emphasize: I'm going to talk about case management issues within the case; I'm going to demonstrate, with any luck at all, the best skills of my profession. I'm going to always demonstrate mutual respect for all the parties involved, particularly the parents, regardless of the life challenges that they might be going through. And this is what will impress judges actually more than anything is I'm going to bring a humanistic orientation. I'm not going to get them lost in all my verbiage and all, "there forthwith and forthwith," and all this business. They hear that every day. They don't want to hear about the latest snappy test to come along or the child abuse risk assessment variables and all this business. They want to know about people. And everyone in the room is speaking their own language and no one is speaking the language of people. The judge is playing his role too, isn't he? He's got the boilerplate Child Protection Service (CPS) report in front of him, he's got the boilerplate reunification plan in front of him. Everything's like stamp, move on; stamp, move on.

One of your biggest responsibilities in a hard to manage case can be to bring it back to human beings; to say hey, we're talking about a child here. We're talking about what happens with their life, not what happens with them tomorrow. We're talking about what will their challenges be when they're thirteen and twenty-one, not the fact that they need a roof over their head today. Those are the kind of responsibilities that we take on. So one of your most important roles might be to bring the court's attention to those factors and to bring them back to that base. Judges appreciate that because it allows them a way of operating humanistically. Otherwise they have no choice other than to just kind of stamp the sheet, stamp the sheet, send it on, give it to the clerk and then they'll know what to do. So it's very important to bring the judge's attention back to the issues of the child. Back to issues of people rather than codes and whether some reunification plan was strictly complied with or not.

And to tell you the truth, judges really don't care. At some level, I've experienced a lot of judges that do not care whether a reunification plan was ever complied with or not. They only want to know one thing, did the parent get better? Yeah, okay, they went to counseling for six months, what does that prove? That they could tolerate structuring their life enough so that they showed up at the same place at the same time at least once a week. But was there any kind of change that went on? Did they grow? Somehow did these issues get dealt with? What was the substance of that? Are we making progress or are we just continuing to deteriorate? Judges talk about law all day, they don't really like it but they do it, their job is to make the law work for people and unfortunately, everybody else has their own interpretation of the law. Experientially their roles end up being to keep the judge, themselves, from doing that.

So they try to keep things in the legal arena and too many times forget to talk about people. Most judges will tell you that it is the cases of child dependency that are the hardest cases that they ever have to deal with. You know, give me a good criminal trial because then there's only three things we have to decide: are they guilty, am I going to hurt them, and how much am I going to hurt them? Because I have to hurt you now, you get sent away.

In a child dependency case, they're really having a trial over someone who didn't do anything. By definition, the child is a dependent. They are a victim here but yet they're the one who is the focal point of the case. Does anybody recall that they've seen cases break down in these areas? Many times I'll be sitting in a case review, which is like a multi-disciplinary team setting, and everybody's talking their own little story. The social worker is saying "Well, you ask the mother, seems like she changes, she talks like she changes" but she hasn't really changed. It's a scam and the therapist is saying "Well, the child has drawn some neat pictures," and the CPS supervisor or somebody is in there going "Well, we're going to have to take this to court and I think we're going to have to just extend this until the child's eighteen," or something, or death, or I don't know what. So everybody's kind of in their own little world and at some point you've just got to say "Just stop! This is craziness! Has case management been done? Is this what we call case management? Everybody here is sitting around and telling their own little story, or is there some real coordination happening here?" Are the people involved speaking to issues of their professional competence?

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Here's one: how many of you have ever heard a social worker say, "I don't care how much therapy they get, they're never going to get better? This mother was unable to change over six months of treatment, another six months isn't going to do her any good." Now that may be true but is she competent to make that kind of decision? Maybe the therapist should be giving us a clue about what's going on here. Are the people within the setting being competitive with one another or are they operating on a mutual or at least professional respect for one another? And you know what I think about when I have that issue come up, I always think, gee, has anybody talked to the mother? Does anybody ever talk to the parent about this stuff? I don't know, it's kind of like we get a group thing happening and the mother's not a part of it and so we make long-term decisions without having a clue what's happening with the parent and maybe even what's happening with the child. Thinking like this brings the case back to talking about people rather than what your position or the position of your department might be.

I think the cases that I'm most effective with are cases where there is a Indian child welfare worker that's also there from the tribe or the local Indian child welfare agency. One of the things I'll often say to them is, "Okay, I'll speak to the issues of case management and all this stuff and you talk about Indian child welfare stuff. Don't let us forget that issue, keep pushing that issue of Indian child welfare and I'll make sure that we stay on track with the people. But in doing that, I don't want to negate that we have some compliance issues and we have some responsibilities to be strictly adherent to the law. So that I don't forget that, I'll have somebody whose job it is to chime away at that and make sure we comply with it. They really are separate roles. Does anybody have any questions about any of this stuff? Does it make you recall anything you've experienced?

Female: On one case that we working on, there was this real young mother whose child had been taken away, and there were a lot of people that were helping this particular young mother because she was very charming. She would go and see the therapist, she would work with the social worker, she would work with our worker and there were two or three other people involved and basically what she was doing was making sure that she always saw everybody separately because she was manipulative. And she always made sure that she saw people separately and then she would tell the Indian child welfare worker, so and so said this and then she would tell the other one, "Well, the Indian child welfare worker said that you said this" and so on. If I only I had had the brilliant idea to bring everybody together in one room at a certain time, including the young woman. And the whole purpose was to say, what are we all here for? Let's get everybody talking to one another, everybody knowing what their part is and make sure that the child is provided service. Let's get everybody talking to one another. And once that was accomplished and everybody knew what their goal was then everybody could say to her, we are all in the same room and this is the plan and this is how we're going to approach it. Oftentimes it is easy to do the manipulation but if in this case everybody knew it was happening and could stop it, check with the other person or make sure.

Art: Right, do some reality checking with one another. There are two things that people that have problems parenting—for whatever their issues might be, and it could be even marginal parenting—two things that they have in common—well, there are actually some other things but the two critical things that you kind of touched on there are: one, that they typically have a chaotic life-style. They kind of flutter, you know? They go around, nothing ever really gets done but they're in crisis all the time. And there's a tremendous amount of energy output that goes on to accomplish very little. So what steers the family? That's one of the things we use in therapy, who is steering the family? Well, in their family many times what you'll find is chaos is steering the family. That is the issue that dominates what happens in that family. The other one is triangulation. Triangulation is a fancy psychology word that just means a triangle. And it means that when they have to directly deal with some issue or another person, rather than doing that, they'll work through a third party in order to do that, thereby making the third party responsible for doing it. And in this case, if you get enough parties involved you can get them all fighting one another and you have to walk away. That's what an alcoholic person does or a drug dependent person does, they get the system of the family to all focus on each another as having problems and they go away and say, "Well, I don't know how those people expect me to change if they can't get their own act together? Those are the kind of critical issues you begin to look at, issues of the parent.

One thing I want to go over real quick: this is the kind of format that we're going to use to be able to take a look at cases and people's roles in those cases. Before the ICWA you had this, right? That was what happened in state courts. You have the presiding judge as a party to the case. He is actually the decision-making party in this matter. You have the state represented, you have the parents represented and you have the child represented, prior to the ICWA. I put "presiding judge" because that's important. Keep it in the back of your head at all times that you may not, in fact, be dealing with the judge. The presiding judge may be represented by a referee who may not, in fact, be a judge. That happens in some counties and people lose an awareness of that and they forget that prior to going to any appeals and stuff they always have the option of appealing straight up to the presiding judge and asking for clarification. They don't really get involved too much, but they can ask for clarification on specific issues. The judge is the decision making entity in a state court. Can we all agree on that? Anybody else experience anything different than that?

The state is represented by local county council, child protective services, child welfare services, whatever they're called in your area, right? Work with me now, just say yes. So the state is represented by Child Protective Services. They have rights in this case. When it says "We the people," or the people are the plaintiffs, that's who they're talking about, the people of that state are making an allegation or whatever. And they hold the burden of proof at some level. They are a party to the case and represent the rights of the government or the people of the State of California. In California, that's the way it would be said. The parents also have rights in this case. They are the ones whose rights are being abridged; they have exclusive right to counsel; they could have separate counsel if they want, that is, each parent being represented by separate counsel. They also are the ones to whom the burden of proof must be generated about. The child also has rights in the matter. One of the problems I've always felt about child rights laws is that they are scattered. They're like hundreds of different little codes within the state. If you put them all together they're actually pretty good. But if they're too scattered, then nobody's in charge of ensuring the child's rights. So they get dumped off on whoever will take it. Many times the state is representing the child's rights, but it's really not appropriate for them to do so. The state's concerns and the child's concerns are frequently different. Generally, they are different so they really should be represented by separate counsel.

When you look in a courtroom, these are the people that you see with the lawyers. That's how you can tell who these people are. They're the ones with the lawyers because they are the ones being represented. Their interests are being represented in court. You now also, since the ICWA, have two new entities within these proceedings. You have the interests of the tribe which is represented by the tribal counsel, a person or Indian Child and Family Services, whoever that agency might be. It might be an entity of the tribe, a local agency, or by the tribal attorney or someone designated to be the attorney in that particular case. Keep this in mind because this is a separate role from some of the other people mentioned. You then have the expert witness. Because you have a tribal attorney in the room does not mean you don't need an expert witness. The case basically cannot move forward without an expert witness. Why is that? Well, the expert witness is the second opinion. The expert witness is basically a legally mandated second opinion given by somebody who has some cultural competence and experience in the area of providing services to Indian children and families. They're kind of a mouthful but they're just plain folks that have been around for a long time. The expert witness works directly for the judge in this setting. There can be other expert witnesses that are brought in by either one of these parties because they can obviously go out and get their own experts. But the expert witnesses identified under the ICWA works directly for the judge. He or she is the judge's second opinion. The report then goes directly to the judge and is submitted into the court record. There are two reasons why that is critical. The overriding thing is that the case technically cannot move forward without an expert witness being involved at some level. It's right there in the law. But second to that, the expert witness answers directly to the judge because if an expert witness is brought in by one of the parties to the case, if they are brought in by the state, the parents, the child or the tribe, those parties have a right to suppress their report if their own report does not agree with that of the judge's expert.

In other words, let's think of this as if you're a defense attorney in a criminal proceeding. If you're a defense attorney and you say "Well, I'm going to go have my client evaluated by a psychologist to see if he's criminally insane," and the psychologist says "No, there's no reason why this guy can't stand trial," well, I'm not going to tell the judge that, am I? I'm going to kind of say "Well, we'll bury this in the works." Suppression is a little bit like saying we'll put it in the circular file or we'll put it in the trash can. And you don't want any of the parties to have that right. So therefore, the judge makes the appointment of an expert witness. The results of that expert witness testimony then go directly to the judge

The reason I bring that up is, I cannot tell you how many cases I have seen get botched because the tribe brought in the expert witness or the parents brought in the expert witness and they figured that they had somebody else involved. And then the expert witness' report gets contested and it just muddies up the whole works because any of these people can go back to their expert witness and say, "You know, I'm gonna suppress this report unless you change it." And then if they change it, it's very clear to the judge that something's happened here, that this report got changed. So the whole thing gets thrown back up in the air. It's a little bit like reshuffling a card deck. Somebody picks up on the fact that there's something inequitable going on. And there's usually a big fight. It's often a big fight about defining who the expert witness is and whether they meet the criteria and all that.

Male: It's like choosing a jury.

Art: Hopefully, it's not that bad. The expert witness is basically a person that knows a little bit more than the judge knows. They can come in and make a recommendation based upon their knowledge base and the existing knowledge of what's going on in the case. There are two types of expert witnesses that you can have. The most important one, the one I'm talking about, is the one that serves as a second opinion. So it would be a person that has some professional training, that has experience with the provision of Indian Child and Family Services to Native people, and that has some greater level of cultural competence than maybe the other people or the state might have. They argue about who can do that. Those are things that are all fought out within the court. The other type of expert witness is someone who has specific expertise. That could be the psychologist but usually I don't think of that as being a specific expertise.

Female: Can you do anything to force the judge to bring in an expert?

Art: Sure, you can have your attorney appeal the case based upon that expert witness—It's better to bring it up right at the placement hearing or even jurisdictional hearing if you can get away with it. To have the attorney say—Let me back up a little bit. It's better to have it as a policy with your child protective services, that whenever there is an Indian child and a report is submitted, that expert testimony will be sought to complement the report. That's from the beginning. But absent that, it's better to say that it is the standing—it's actually standing law—that if you are going to seek to effect a foster care placement or preadoptive placement, that there must be expert witness testimony that gives a second opinion. Basically that's what the law says, give a second opinion.

There's a very dangerous thing happening in California courts these days, and that is, that the law says the expert witness testimony must be there and that the expert witness testimony must be a part of the data base that the case is founded upon. So what the slick county counsels are starting to do is, they're starting to say "Our worker has some training and they saw an Indian client once, so they're an expert." Because remember, the bottom line of what an expert is in most court cases is that they have to know more about it than the judge knows. So they'll qualify their own worker and serve as their own expert. Well, what's happening? Well, you have a duality of roles here, don't you? This person can't be that person, and the other way around but yet they're getting away with it. So that will be challenged some day in court.

There are other parts to this as well. As the case moves on, there may be other parties involved in the case that are appointed counsel. One is that you may even have the Indian Child and Family Services be a separate entity. And that happens. I have been involved in cases where you have an expert witness, you have the tribe and you have Indian Child and Family Services. All are represented in court, or all are there anyway. It's really a clear sign by the court that the case is deteriorating into permanency planning rather than reunification. And the judge will appoint foster parents their own counsel. Usually, that means it's because the foster parents have been contacting the court a lot and complaining a lot about something. So he'll appoint them counsel and allow them to be recognized as a party. What he is doing at that point or she is doing at that point is, they're beginning to say that there are other parties who have a right to counsel as parents, that there's the mother, there's the father and in some cases there's the grandmother or grandfather or the grandparents. And, in this case, the foster parents. So it's beginning to dilute the rights of the parents. It's a real dangerous move, isn't it?

This really speaks to two things. One is that you have some judges that realize or at least have been educated about what the provisions of the law are. And secondly, that—and you probably know this as well as anyone here—that you have some respect there from the court. That is hard earned respect that doesn't come overnight. It comes from being there, doing good work, good clinical work, good social work for many years. Those are hard earned rights. And what you're saying is that the judge kind of has a standing appointment. That's great. That's what you want.

Male: Can you address the areas of adoption and foster home placements?

Art: You're talking about Indian parents that want to adopt Indian children?

Male: Yes, or the placement of Indian children in Indian foster homes.

Art: Oh yeah. That's kind of an ongoing effort, probably for most of us in this room, trying to recruit foster homes.

Male: My question, is who represents the child and who represents the tribe in these situations?

Art: You lost me a little bit. Is the tribe represented in the urban setting, is that what you mean? Yeah, they have a right to be. And there's a critical issue but I'm not sure it's what you're referring to. If the child's attorney is the same person as the state's attorney, what does it mean? It means that nobody's representing that child's rights. And nobody even thinks about it. Nobody seems to care.

Male: What you're saying then is that the assumption the state says is, "We're going to take the child away." Then nobody's representing the child.

Art: I'm saying that their interests might be separate but they're not going to be advocated in court. Nobody's going to bring it up because there's nobody to bring it up. There's no lawyer there and a child is not going to bring it up. A child is probably not even going to be in the courtroom.

Male: What's the benefit in that? I don't understand.

Art: Well in other words, the state and the child's position are the same and their position is whatever the CPS worker says should be done. So there's no independence in advocating those separate positions. Let me look at the parents and it will be a little more clearer. How many of you have ever been in a court where there's no counsel representing the parents? Or maybe the parents just don't show up? There are court cases that you'll find where there are no parents that show up and there is no counsel representing the parents. What happens in those cases?

Female: Continuance?

Art: That's good. That's great. That's what should happen. In some cases, they're appointed counsel. In some of the counties that I work in, they will just go without representation.

Female: As far as this question about who's representing the tribe in urban areas, sometimes what happens is, the tribe will contact like an urban Indian child welfare program and ask us to represent them, or to go and just be present, find out what's going on and report back. Or they may send us a letter saying this is what we want done, this is our recommendation for this case.

Art: Yes, and that certainly makes sense. We talked this morning about—actually there are some courts that are saying they are not going to recognize anybody to represent the tribe that's not an attorney.

Female: Orange County does.

Art: Yes, and the tribe can select anybody they want to represent their interests. If there's nobody representing the parents and there's no counsel appointed, then their rights are just plain not considered. The same holds true for the tribe. It's up to all the other parties—it is still up to all the other parties to kind of take their interests into consideration. But you know that's probably not going to happen too well, is it, if they're not represented by somebody in court? It could be somebody who's an elected official, it could be someone who is the tribal social worker, it could be the tribal attorney or somebody appointed by the tribe, like the local Indian Child and Family Services, to represent their interests in court. They have to have a designee. They have to know the case's happenings, which speaks to notification. And they have to know that they have the right to intervene, this cannot be assumed. In response to your issue in prisons, there are many of our Indian people, many of whom are victims of abuse. I'm not aware of any specific research that's been done in that area, but I do know that in the general prison population, the evidence is overwhelming that child abuse and winding up in prison are very closely related.

The weight of information is staggering but the commitment of the government to do anything about it or maybe even the people to do anything about it is gone.

Male: Do you have any statistics, or are you aware of any studies that relate to problems that arise later in life for children who were adopted out by non-Indian families as children?

Art: I don't know of any work that's been done in that area. I know that there are a lot of case studies and case stories and experiential stuff that would tell you, not necessarily how this comes out in relationship to being in prison later on in life, but that there's a close relationship to placement with out of culture placements and self destructive behavior later on in life, particularly alcoholism and suicide. Let's talk about some cases before I lose all you guys.

Female: I've got one. We have an Indian child that was in a foster home for three years. This was before our unit was established. The child was never identified as an Indian child until later on, after it was transferred to our unit. In reading the case file, the social worker discovered all of this so she immediately got in touch with the child and the child was refereed to the State Agency. The social worker from that agency stated that she was in favor of foster care placement.

Art: Well, they have vested interests. They are a social worker.

Female: Yes. In fact, I think she had falsified documents.

Art: Not unheard of. They will do it.

Female: Anyway, the tribe wanted to take jurisdiction and so, they hired their own attorney. But this is the one I was talking about where the tribe brought in the expert witness.

Art: And then suppressed the report, was that how that ended? The tribe suppressed the report or the judge did, or who did?
Female: The judge.

Art: The judge disallowed it based on the fact that there's no cross examination.

Female: Yes. And he left the burden of proof on the parents and their attorney to prove why the child should be moved to an Indian foster home.

Art: Should be moved to an Indian foster home?

Female: Yes. Should be left with the non-Indian foster parents. And they're using all those bonding issues and that whole rationale. The parents were drug addicts and street people, homeless.

Art: So the parents' interests that were being represented in this case were that she wanted the child to stay with the foster parents? At least the position being represented by her attorney is that she wants the child to remain with the foster parents?

Female: Yes.

Art: The foster parents have their own separate counsel who is saying the same thing.

Female: Yes.

Art: And the child's attorney?

Female: The child's attorney was kind of ambivalent about what to do because she was looking at the child and the tribe.

Art: As an expert coming into that case, that would tell me a lot. If you have the child's attorney ambivalent about what's going on, knowing the kind of scene that's being painted and how it kind of points them in a definite direction of supporting what these two people want, and they're ambivalent? That tells me a lot. That tells me there's probably a lot more going on here than I'm aware of.

Female: The reason why the mother wanted the child to stay with the foster parents is because she had some bad memories about her reservations; she was also angry at her parents. Her parents put her in a foster home and never tried to get her back, so she was raised by non-Indian foster parents.

Art: Let's try to sort this out. And CPS, I'm assuming, wants the child to stay with the foster parents?

Female: No. We want the child to go back to the tribe.

Art: So the state says, send the child back with tribal placement because of all our accumulated knowledge about what happens to kids in placement. The tribe, are they represented?

Female: The state is, there is county counsel which they changed the middle of this.

Art: In mid-stream, yeah.

Female: Yeah. We were doing well with the old county counsel because she was agreeing with everything that we were recommending. The new county counsel came in, she didn't know anything about the case, she didn't know anything about Indians, she didn't know anything about ICWA, and she was also intimidated by the judge.

Art: She was intimidated by the judge, okay. So she was, therefore, just too scared to say anything?

Female: Yeah.

Art: Was the written recommendation of CPS, though, for the child to return to the tribe? Okay, so it was in the record somewhere that that was a recommendation. Then the tribal attorney came in.

Female: Uh huh.

Art: And the tribal attorney brought in an expert witness on their own behalf. Now, see, that's kind of a key thing. And the expert witness, their report said what?

Female: The gave testimony on what happens to the children when they're raised, there are all kinds of statistics on what happens to such children.

Art: So, they give historical research data about what goes on with these children. The expert witness submits this report in writing?
Female: No, they just came in and testified.

Art: Therein lies a problem, doesn't it?

Female: Live testimony in court.

Art: Oh, okay, that's alright. And then the case gets continued for a period of time and the tribe does not call back the expert witness because they haven't been contacted by any of the parties saying they want to cross-examine?

Female: Yeah.

Art: And the judge holds the tribe culpable for that?

Female: Yes. The judge said he is going to strike the testimony of the expert witness because he ordered the expert witness to come back.

Art: Oh, the judge did that. That's what he says?

Female: That's what he says. Now, what that tribe's attorney needs to do is ask for the transcripts of that particular day to see what was really said. There were three of us that heard the judge say, we understood the judge to say, that the foster parents' attorney was to contact the tribe's attorney if he wanted to cross-examine the expert witness. The foster family attorney did not tell the tribe's attorney that he wanted to cross-examine her.

Art: Well, I don't want to get lost in the details too much. Why didn't somebody request the judge to then subpoena the expert witness? I mean, if that was the case, wouldn't the expert witness have been called and subpoenaed before the court?

Female: Well, who should have asked that?

Art: Well, the judge issues a subpoena regardless of who requests it, if he is ordering it, if it is, in fact, an order of the court that the expert witness be there, then that is, in fact, a subpoena.

Female: Well, I don't know, that part is not clear.

Art: They got lost is what they did.

Female: The attorney did not understand it that way so she didn't call the expert witness back. So that the expert witness testimony from the whole proceeding is therefore the burden of proof of the foster family?

Art: This is why the expert witness should always be appointed by the judge, and most judges aren't going to do that unless all parties stipulate to the qualifications of that expert. That's how judges do that, they don't just say, well, let me look through the book. They want all the parties to stipulate to the expert's expertise, otherwise I'm going to be bringing people in and out of here, and they don't want to pay for all that. One expert, we're all going to stipulate to their qualifications, and then if you don't like the report, well, you always have the right to bring in your own expert anyway. Therein lies the problem. It could have been suggested that at the time there are some things that could have happened. I'm not sure if you are at a point where it can happen anymore. One of the things that could have happened would be for someone to request the judge to subpoena that expert for a continued hearing. Another thing that could have happened would have been for the expert to insist that they be appointed by the judge and work for the judge rather than the tribe. An additional thing that could have happened would have been for the expert to have—before this ever happened—for all the parties to have stipulated to the expert's recommendations. That's a little harder to get, but it happens, and that's my preference in how to deal with things.

So you have the judge basically taking this report and he's trash-canned it. So now you have an issue of going back to the judge or going back to court and saying we cannot move forward on this case. Why? Because we have no expert witness testimony, you just trash-canned the one that we had. Then, at that point, you have an opportunity to have all the parties stipulate. So you can go back to square one, you have the right to do this because it was never done. You can say I want the judge to appoint an expert witness that is stipulated as to the qualifications by all parties.

Female: What if he says no?

Art: If the judge says no, my bent on it would be probably for the tribe, if not some other party, to immediately appeal. You can ask for an immediate appeal to a higher court based upon the requirement for expert witness testimony in the law. They read the law, that's all they do. They read the law and based upon your written appeal, they give you a quick response as to what the intent is. Now the appeals aren't always reliable either, but with any luck it would come back and say that an expert witness is required, or at least recommended in that case.

Female: So if this judge is not the right judge, you can appeal it to the right judge?

Art: Well, there's two levels of appeal at that point. It's one of the writs that's filed. If they file a writ and the case is continued for a very short period of time, it's about two weeks, that written material has to be submitted in so many days. It goes before either the presiding judge or an alternate judge who is maybe not involved, and they give kind of a quick response, that's what it is. It's a quick opinion back to the referee or whoever is hearing the case as to whether an expert needs to be appointed or not. To tell you the truth, my experience is that if you do a quick appeal like that, just the fact that it's so contested may cause the presiding judge to say, Yeah, you need an expert witness, if for no other reason than for all the people you've got here in this case.

This is crazy, you're going to have to have somebody help you figure this out other than the social worker. Let's look at this issue in terms of the roles people are playing and how that is consistent with what their needs might be. The state is actually acting very appropriately in this case. They're to be commended actually. The county is to be commended for taking a kind of bold position in the case. You know, they may not be appropriately represented or something like that. So they can talk to their attorney about that, but actually they're doing okay, generally speaking.

Female: I think it's an important issue.

Art: Right, and that's critical. If this was brought through the regular county system and they recommended that the child go directly to whatever, the transfer jurisdiction or whatever, it would probably sail through.

Female: I forgot to mention that the tribe filed a petition to take jurisdiction and the judge denied it.

Art: Just shattered the whole image.

Female: He was clear that he wanted the foster family to keep that child. It could have been up there in neon lights that this judge is prejudice, biased.

Art: Well, there are some real wild things you could do. You could appeal on the basis of judicial behavior, but that's not going to win you any friends.

Female: Well, the tribe's attorney didn't want to appeal.

Art: Probably because of inances.

Female: That was one of the reasons, but there was another reason, I forgot what she said.

Art: Well, one of the reasons may have been that she had the parents opposing it. You have a weak foundation.

Female: They can block transfer?

Art: Well, yeah, you've got that darn BIA document that says if the parent decides differently, that decision can be used as cause and you can have a hard time fighting that in court.

Female: If it wasn't for that judge, we could have taken that child because those people didn't know anything about the BIA. This is just one of those cases where this parent wanted the child moved and everybody, no, the foster family didn't want it, the attorney didn't want it, and the state said, what right did the parents have to where that child is going to go. You've got to listen to the court. What does the court want? What does the judge want?

Art: How many want to take a vote that this foster family has independently spoken to the judge in chambers? So you're absolutely right. First of all, have the parents' rights been terminated or is it long term foster care?

Female: No, no.

Art: Has it gone to permanency planning?

Female: Yeah.

Art: It has gone to permanency planning?

Female: Yes. Yes, that's what we were trying to prevent.

Art: Okay, you were at a permanency planning hearing?

Female: Yes, now it's in long-term foster care. Now they're talking about adoption.

Art: Yeah. At a permanency planning hearing you have a good argument, that the parents only role in the case, the parents' attorney's only role in the case, is to argue whether unification should or should not occur because that's the issue isn't it? At a permanency planning hearing, that's the first determination that needs to be made. So there's a little inappropriate behavior going on here on the part of the counsels representing these folks.

Female: There's also a new attorney that's been appointed.

Art: Why?

Female: Because the other guys won't do it.

Art: Oh, you think that they switched or something?

Female: I don't know why. I just got the case ,but I've been kind of following it.

Art: Okay. It really speaks to this parents' issues, doesn't it? This parent may have a lot of survivor issues.

Female: Oh, definitely.

Art: Yeah, this parent may have experienced a lot of substance abuse. We could go on and on, couldn't we? The oppositional staff that they've taken in the case speaks to some stuff that's going on with the parent. It would have been a good thing to have that somehow, to have some control of that issue by having had those things treated prior to this hearing. In the three years of prior history in this case, it would have been nice if the parent had gotten some competent counseling to address issues of cultural identification, self-esteem, abuse survivor issues. How many want to take a bet that that's what is going on here, substance abuse issues? Maybe not in that order.

Female: We need to remember something, that the child was not identified as an Indian child.

Art: Right.

Female: So all this time those issues hadn't been addressed.

Art: As an expert witness in this case, my first recommendation might have been that the court reconvene a jurisdictional hearing, because the court never had bona fide jurisdiction in the case. In other words, the foundation that the court established to get jurisdiction in the case was bogus anyway. They never followed the law so they may have to go back to square one and reopen the case all over again. They're probably not going to go along with that, but I would have stated that somewhere in my report for appeal purposes.

Female: I just remembered as I was writing this down, that when the tribe sent their petition down, instead of sending it to court they sent it to the social worker. The social worker stuck it in the file and left it there. She didn't forward it on to the court.

Art: There's a little bit of sabotage going on there. There's also a little bit of inappropriate behavior by the tribe's attorney because that's not a proper form to file the appeal in. They should have filed the appeal directly with the court. It's not uncommon for them to do that. I'm not saying that they're bad people or something. It's just that, you know, if they had to do it over again, I'm sure they would have done it the other way. These don't always seem like critical mistakes, but they can be. If that petition had been filed immediately with the court, then the court would have been immediately served notice that a transfer of jurisdiction by another competent court had been made, and you may have been able to divert the whole issue. Why was jurisdiction never transferred?

Female: I think the judge denied it.

Art: On what basis?

Female: I don't know.

Art: You know what's going to happen in a case like this? And this may be why the tribe's attorneys were reluctant to appeal it. What will happen in a case like this, is you'll win on appeals and the child will be eighteen.

Female: Well, this new attorney, the one that has the parents believing they can have the child back, wants a reevaluation within six months. She says she can do it, and the new attorney is telling her we will file another kind of petition. Now I don't know, we will have to look at that and see if that's possible. I don't think it's possible, but if somehow she manages that.

Art: What would be the point of that additional petition? You lost me there somewhere. Her attorney is saying that he's going to file a petition?

Female: Yeah, her attorney is saying that when she's ready, he will file a new petition.

Art: Yes, they can file another petition. And that is true because the child is in long-term foster care, so they can file an amendment petition to the permanency plan. The likelihood of that going through is, you know, real great.

Female: So the parent can get the child away from the foster family, and because the foster family knows how that parent is, they can give her some money and say, you know, go out and get yourself a fix. But in the meantime somebody has to be with that child. And the child was put in a foster home.

When the tribe found out about this permanency planning coming up, they said they want that child taken out of that home immediately. I don't know what happened. But what I think happened was that our social worker didn't do that immediately, and at the next hearing the judge ordered that the child not be moved. See, we don't need to have an order for the judge to move that child.

Art: Right, the child can be moved by a legal issue.

Female: But, the child wasn't moved when the tribe said they wanted the child moved, and then the judge came in and said, Leave the child, I don't want that child moved from there. He ordered the child to remain in that home.

Art: Okay, what you have here is unfortunately very common.

Female: You're talking about one of those difficult cases.

Art: Yes, difficult to manage cases. It's very common because you have a tragedy of errors, don't you? You have errors made on almost everyone's part here. You have an error made on the state's part because they didn't act with sufficient speed and they didn't respond, really, to the things that were being sent to them by the tribe. Yeah, they're on the part of the parents because the parents are being complacent with the whole process of subverting their own rights. So, that's kind of interesting. You have the child's attorney that's just kind of flaking out here and not advocating for the child's needs, and probably doesn't want to rock the boat. They see all the parties fighting and say, hey, why should I get in the middle, you know. The foster family agency, who, is for God knows why, represented by counsel in this case.

Female: No, it wasn't the foster family agency or the parent.

Art: The foster family. Yeah, they probably sought their own counsel initially.

Female: Then they were granted.

Art: Then they were granted status, yeah. So, now they have a firm fit in the court because it is a permanency plan, in a permanency planning phase, so they do have some rights in that arena. You have the tribe's attorney who is probably regretting that they ever sent the petition to the social worker instead of the court. They see themselves as having a shaky agenda for appeals because the appellate court will look at all the issues, even the fact that the parents have advocated for the foster family to remain in care of the child. There's never been an expert witness. There has never been a prior notification or a prior compliance other than up to the point of your involvement.

So the foundation that backs this case up, that brings it to this point in time, is very shaky. How would you deal with this? Well, you're kind of out of the arena of treatment issues. Long term, you might be able to get some mileage out of treatment to the parent only. Your judge may, and I don't know this judge so you may have some latitude there, since he is a judge that specifically hears Indian child welfare cases within the county, it might serve you well in the long run to meet with this judge about this issue. Try to sit down with the judge, the tribe's representative, and the child's attorney. The child's attorney being a really important character in this situation.

Because you're being represented by separate counsel, these are the non-invested parties to this case: the state, the child, and possibly the tribe. That the three entities could sit down with the judge and say, Look, let's talk about this case. Now the judge has the right and probably will ask the other parties to be represented in a conference, a case conference, but the fact that you brought it to the court's attention is going to mean something. At that point you can re-hash the issues, you can go over the law, and hopefully the judge will allow you enough latitude to be candid about what should and should not happen in this case, and kind of review the critical incidents of the case down to determine how this case came to be as non-compliant with the laws as it is today.

Based on that, the judge may, in fact—I mean, you're just really asking for him to take one step: to assign an additional hearing for the purpose of cross-examination of the expert witness. That's not asking a lot. Judges continue things forever. All your asking is for the reconsideration of one bit of flawed evidence. If the judge does not do that—and there will be a record of that conference, by the way—then you have a case for judicial misconduct, because the judge has knowingly, after your department has laid it out what the judge would have to do in order to act in compliance with the existing law, chosen not to do that.

If you ever intend to appear before that judge again, don't do it. But the tribe could certainly file an appeal based on judicial misconduct and based upon lack of compliance with the Indian child welfare legislation. I don't think that the attorney should be so intimidated by the fact that the parents are backing up the foster family plan.

Female: The attorney is intimidated by the judge.

Art: Is this the elderly judge that's there?

Female: No. She said she can just go ahead and be a nervous wreck. She said that the judge intimidates her.

Art: Well, that's pretty clear cut, isn't it? My biggest frustration in dealing with child issues is really not what makes it an exceptional case. It is more times than not the adult issues.

WORKSHOP 5

Public Law 280

(Friday, January 17, 1992)

Facilitator: Carole Goldberg-Ambrose; Honorable William Thorne.

Carole Goldberg-Ambrose: I want to welcome you all to this workshop. It's at the very end of the conference and I'm going to assume you're all very interested because you're here at this late point in the event. I'm Carole Goldberg-Ambrose and I'm on the law faculty here at UCLA. I teach courses in American Indian Law and in Tribal Legal Systems. And in 1990 I was the acting director of the Indian Studies Center here.

I've been actively involved with the center for a long time. Beside me is Judge William Thorne who has been a tribal court Judge and is now a State Judge in Utah. And many of you saw him, I assume, this morning at the demonstration hearing in the courtroom at the School of Law.

I'd like to spend some time this afternoon speaking about some of the legal issues bearing on the relationship between Public Law 280 and the Indian Child Welfare Act (ICWA), as well as some of the practical issues, particularly those relating to tribal courts and tribal governments generally.

My hope is that most of this workshop will be taken up with discussion and questions rather than presentation because I'm interested in having this be as responsive as possible to the concerns that you have. And certainly after I've spoken, Judge Thorne may want to make some comments as well, offering his own ideas and suggestions and any questions he may have about this issue.

It's common in these kinds of presentations to try to open up with some kind of amusing anecdote. It is really not that easy to think of something funny to say about Public Law 280 because this federal statute installed state authority in Indian Country without Indian consent, despite the fact that the United States Supreme Court has described the states as often the most bitter of enemies to the tribes. So the only laugh I can think of is on the states themselves because as Public Law 280 has been interpreted by the courts over the years since it was enacted in 1953, at least some of its teeth have been removed.

It can still chew a little. But certainly the courts have interpreted Public Law 280 in a way that has removed some of the authority from states that people initially thought would exist. To summarize briefly, Public Law 280 identified certain states, California among them as states that should automatically assume certain civil and criminal jurisdiction over Indian people in Indian Country. It contained certain exceptions. For example, it wasn't supposed to impair treaty rights or hunting and fishing rights. It wasn't supposed to eliminate the trust nature of Indian lands. It wasn't supposed to authorize the taxation of Indian lands.

The basic framework of Public Law 280, then, was that some states obtained certain civil and criminal authority in Indian Country and the federal government had to get out of the business of enforcing its Indian Country criminal laws in those states.

Public Law 280 was a product of its time, a time when many tribes were suffering from termination which was a harsher measure that actually eliminated the trust status of Indian lands and sought to abolish the tribal governments. But, Public Law 280 wasn't supposed to go that far; tribal governments were to continue. The trust status of reservation land was to continue. Another sense in which it was a reflection of the time is that the early fifties were a time, perhaps not too dissimilar from our own, when the federal government was trying to relieve itself of fiscal responsibilities. The purpose of transferring jurisdiction to the states was to eliminate the necessity for federal funding of criminal authority.

What followed from this fiscal concern is that the states didn't receive any money along with the jurisdiction from the federal government. Public Law 280 also said that other states besides the five, later six, that it mentioned, could seek to assume the same kind of jurisdiction if they enacted state laws and where necessary, amended their constitutions. And some states did that, for example, Nevada and Washington, at least in part.

This is the framework of Public Law 280. Now how did some of its teeth get removed? First, Public Law 280 was adopted in 1953. In 1968, Congress enacted the Indian Civil Rights Act which said among other things, that for any future state, jurisdiction under Public Law 280 could only be obtained with the consent of the tribe. What was so problematic about the original Public Law 280 is that the states received power without the tribes agreeing to it.

After 1968, the law said there could be no more state jurisdiction over Indian people in Indian Country without tribal consent. Now this didn't undo the jurisdiction that states had obtained between 1953 and 1968. It just that said any future state jurisdiction had to be with tribal consent.

The original Public Law 280 had also created a mechanism for the jurisdiction to return from the states to the federal government.

It's called retrocession. But the original Public Law 280 said that only the states could initiate that process. The tribes couldn't say, "We've had enough of this, we want the states off our backs." It could only be on state initiative or, of course, if the tribes could somehow persuade the states to go along with it. And the 1968 Indian Civil Rights Act left that scheme unchanged.

Some states have initiated retrocession for individual reservations. But California, for example, has never been very enthusiastic about retrocession at all. Back in the mid-seventies, I was involved with some projects that the then-Governor Jerry Brown was interested in initiating about setting up a scheme for retrocession in California. It never got beyond the thought process in the Governor's office. It never saw it's way into an act of legislation.

So what the 1968 Civil Rights Act left us with was a great deal of jurisdiction that the states received between 1953 and 1968, and really there has been no more Public Law 280 jurisdiction since then. It is some indication of what tribes think of Public Law 280 that at the point in time when they said "No more without consent," there was never any further consent. But the tribes could not undo what had already been done.

However, what the 1968 Indian Civil Rights Act did by creating this different concept of Public Law 280, that it ought to be consensual, is that it gave a signal to the courts, a kind of invitation, to interpret the original Public Law 280 in the modern spirit of greater tribal self-determination, not to interpret it in the spirit of termination in which Public Law 280 was adopted. And that invitation has been taken up by the courts.

What the courts have basically done is they have tried to interpret very narrowly, the affirmative grants of jurisdiction to the states that Public Law 280 contained. That is, wherever there was a question of did Public Law 280 give the states a lot of jurisdiction or a little, the courts, if there was any ambiguity at all or they could concoct any ambiguity at all, would say it was less rather than more.

The most important decision in this area was a 1976 U.S. Supreme Court decision called *Bryan v. Itasca County*, that said that under Public Law 280, the states did not receive the power to engage in regulatory activities on reservations. All they could do was make their courts available for criminal prosecutions involving reservation Indians and for civil lawsuits involving reservation Indians.

That's very different from saying that the states can also impose all their tax laws or all of their licensing laws. You know the broad range of licensing that a state like California does.

Everything from dogs to beauticians. All of that was excluded from Public Law 280 by the Supreme Court's decision in *Bryan v. Itasca County*.

Furthermore, wherever there were exceptions in Public Law 280, exceptions to state authority, the courts have expanded them as much as they could. For example, when they had to interpret whether the states received taxing power under Public Law 280, they interpreted the exception that excluded state taxing power very broadly. They interpreted the exception for hunting and fishing very broadly.

There are small departures from these trends; the general trends are clear nonetheless. And to me the supreme irony is that the courts have taken the existence of Public Law 280, with its scheme for transferring jurisdiction from the federal government to the states, as the *only* mechanism available for states seeking to assert authority on reservations.

So, for example, that if you're in a non-Public Law 280 state, a state that has either not been named in Public Law 280 or has not utilized the mechanism that Public Law 280 created for obtaining jurisdiction, then the courts normally say, "Well look, you could have gotten jurisdiction over Indians under Public Law 280, but you didn't. And now after 1968, you surely can't, because the tribes won't consent. So we are going to say if you haven't been able to take advantage of Public Law 280, then you, the state, cannot assert authority over Indians on reservations otherwise. You can't make any other kind of argument that the state is so interested in what's happening on this reservation that the state ought to assert authority."

Clearly I don't want to minimize the detrimental nature of Public Law 280. It has been a very significant blot on the history of federal Indian policy. And let me just add one other aspect of Public Law 280, apart from the directly that has been very harmful to tribes. And that is that the federal government has taken the view that Public Law 280 enabled it to wipe its hands of responsibility for tribes in Public Law 280 states.

For example, in a Public Law 280 state like California, the Bureau has been extremely reluctant to provide any funding for tribal courts. Their view is "Well, you've got state courts available to you. You don't need tribal courts."

The harmful effect of Public Law 280 is not simply the affront of Congress enacting a law without tribal consent. It's not simply the creation of state authority. But it is also the undermining effect that it has had on the overall sense of federal responsibility for tribes and funding for tribes in Public Law 280 states.

What I want to talk about for the rest of my presentation is how Public Law 280 interacts with the ICWA, because it has really presented some unique and complicated problems.

As I'm sure you all know, ICWA was designed to halt the wholesale placement of Indian children in non-Indian homes for adoption and foster care. For our purposes, the parts of the Act that are most relevant are the parts that set forth the scheme of jurisdiction or judicial authority for state and tribal courts in child custody matters outside the area of divorce.

Just as an aside, a friend of mine is the legal advisor for the television show "L.A. Law," and he told me recently that the fellow who plays the senior partner in the firm, Richard Dysart, was interested in having one of the episodes take place in a tribal court. My friend asked if I had any ideas for what would be a good setting, and I said, "The ICWA does have an arrangement where cases can be transferred from tribal to state court. That would be an interesting way to present it." And I gave him a copy of the statute which specifically says that ICWA does not apply to child custody proceedings in cases of divorce. Well, what do they do? They create an episode of this show which is supposedly focused on an Indian Child Welfare matter. They invoke the ICWA, and it's a divorce case. So don't believe everything you see on "L.A. Law".

Under the real scheme of ICWA, tribal courts are supposed to have the exclusive authority over adoption and foster care placement cases where an Indian child is domiciled (has a permanent residence) or resides on the reservation or is a ward of the tribal court. This tribal authority is exclusive says the statute, except where the jurisdiction is otherwise vested in the state by federal law, which everyone has interpreted as a reference to Public Law 280, or there are some other individual statutes like Public Law 280 that apply to individual reservations in particular states.

Furthermore, says the statute, in proceedings for foster care placement or termination of parental rights of Indian children domiciled or residing off the reservation, state courts are supposed to transfer the cases to the tribal court, absent either the objection of the tribe or either parent or if the state court finds good cause to the contrary. There are no other exceptions in the part of the statute dealing with transfer of off-reservation cases. That is, there is no reference to any exception for states that have been granted jurisdiction under federal law, the same way there is an exception for the exclusive tribal jurisdiction of tribal courts over on-reservation cases.

To complete this potentially very confusing scheme, the ICWA does provide for tribes in Public Law 280 states to petition the Secretary of the Interior to reassume jurisdiction over child custody proceedings and authorizes the Secretary of the Interior either to approve the petition in full or to accept it in part. So the tribe could conceivably obtain only transfer jurisdiction or it might obtain exclusive jurisdiction, but only over some specific geographic area.

To recapitulate, the tribe is supposed to have exclusive jurisdiction over on-reservation children unless federal law gives jurisdiction to the state. The tribe is supposed to receive jurisdiction by transfer from the state where off-reservation children are involved unless the tribe or either parent objects or there is good cause to the contrary. And then there is provision for petition in Public Law 280 states to reassume jurisdiction.

This scheme is potentially thoroughly confusing. It assumes that everyone understands and agrees on the workings of Public Law 280 in child welfare matters. That may actually be the funniest joke I can offer you because when people started trying to interpret the Indian Child Welfare Act in Public Law 280 states, they realized how very difficult reconciling these two statutes would be.

For example, one big question is how much jurisdiction the states had actually obtained over child welfare matters under Public Law 280. Had states received complete jurisdiction under Public Law 280 to resolve all child welfare matters involving on-reservation children? If they had not obtained complete jurisdiction over all such matters, did the tribes retain exclusive jurisdiction over what the states did not get?

One way to look at this question is to examine it in light of the provision in the Child Welfare Act for petitions to reassume jurisdiction. You could say, "If Congress provided for such petitions, that must mean that tribes in Public Law 280 states lacked jurisdiction, which is why they needed to petition to obtain it. So Public Law 280 states must have had complete jurisdiction somehow."

There is another way to look at it this question though, and that is to start with Public Law 280 and figure out how much jurisdiction states obtained in child welfare matters by looking at general authorities on Public Law 280. These authorities suggest a very different answer because, as you'll recall, Public Law 280 did not give states authority over regulatory matters, only over criminal litigation and civil disputes.

Thus, these authorities compel us to ask whether child custody matters involving termination of parental rights and foster care are civil disputes, in which case, the state has jurisdiction, or regulatory matters (in which case, the state never acquired jurisdiction over them under Public Law 280 in the first place)? The Attorney General of Wisconsin has issued an opinion, and I have reproduced the opinion in this handout. He has said that involuntary proceeding to terminate parental rights, proceeding which state initiates, not the parents, are regulatory proceedings, as are involuntary proceedings for foster care placement. And under the general authorities interpreting Public Law 280, the ones that pulled some of the teeth out, that would mean that the states never acquired this authority under Public Law 280, so a tribe should not have to petition in order to assert it. The tribe never lost such authority.

The Attorney General of Wisconsin has taken a very different view of voluntary proceedings. The Attorney General of Wisconsin has suggested that in voluntary proceedings involving Indian children who are domiciled on the reservation or residing on the reservation, states have Public Law 280 jurisdiction because these are civil disputes.

Thus, in Public Law 280 states like California, involuntary proceedings involving Indian children who are domiciled or reside on the reservation are outside the states' Public Law 280 jurisdiction, because these are, according to the Wisconsin Attorney General, are regulatory proceedings.

There is a further problem in California, however, which is that very few tribal institutions exist that are in a position to exercise authority over child welfare or any other type of judicial proceedings. Now the absence of tribal courts does not, by itself, confer jurisdiction on the states under Public Law 280. But it does create overall anxiety and perhaps some incentive for agreement between the tribes and the states in which tribes might say, "We will deputize the states or authorize their officials to come in and serve as tribal judges for certain purposes." But these state officials would have to be exerting tribal authority rather, than exercising some kind of independent state authority.

Honorable William Thorne: And executing tribal law.

Carole Goldberg-Ambrose: Yes, the state officers brought in by agreement would have to be carrying out tribal rather than state law, of course, the state may take a very different view. They may say that the ICWA, by providing for a petitioning process, presumed that the tribe must not have had exclusive jurisdiction, that the state must have had authority, or else why would this petition process exist at all?

But these are the kinds of differences that ordinarily give rise to negotiation between tribes and states because it is usually not in either group's interest, particularly in lean times, to fund the legal profession with a blank check for litigation purposes. Negotiations and agreements make sense in settings like this.

There actually is a way to try to reconcile the existence of the petition provision in the ICWA with the decision of the Wisconsin Attorney General saying that the states don't have Public Law 280 jurisdiction to begin with, at least not where involuntary proceedings involving on-reservation children are concerned. And that is, you could read the petition provision as simply providing tribes with a means of absolutely clarifying the situation. In other words, the tribe might take the position, "We have the jurisdiction and the state doesn't. But the state takes a different view of this. In California, this is true because the state has been very antagonistic to tribal authority. And the petition process is available to us as a way of going back to the state and saying, "Leave us alone'."

In fact, the regulations that the Secretary of the Interior has promulgated to carry out the ICWA have actually articulated the view that one of its functions is to clarify jurisdiction, not necessarily to create it. That may be one way to reconcile the existence of the petition process with the absence of certain Public Law 280 jurisdiction.

Another interesting question to contemplate in thinking about the interaction of Public Law 280 and the ICWA is how much jurisdiction did the tribes retain in situations where state jurisdiction does exist. Two situations will illustrate this. One is the voluntary proceedings involving children who are domiciled or reside on the reservation. Those are the cases that even the Wisconsin Attorney General is prepared to say are cases within state jurisdiction under Public Law 280 because, according to the Wisconsin Attorney General, these are essentially civil lawsuits. They are not situations where the state is trying to regulate parental conduct.

While it is possible to quarrel with this characterization, let's assume for the moment that states did acquire some jurisdiction in child welfare matters under Public Law 280. The other kinds of cases where you might ask what does the tribe have where the state also has jurisdiction are the cases involving foster care placement and termination of parental rights where the child is off the reservation—in other words, the involuntary as well as the voluntary proceedings with the off-reservation children.

To analyze the extent of overlapping or concurrent jurisdiction over child welfare matters in Public Law 280 states, you might again look at petition provisions in the ICWA and reason backwards. If a petition is provided for, then the tribe must not have jurisdiction without the petition. That's one way to look at it. But there is another way of looking at it. That is, again, to look at the general authorities interpreting Public Law 280 and start from that point. And you come up with a very different result that way. From this starting point, the big issue is did Public Law 280, in the course of giving the states jurisdiction, withdraw jurisdiction from the tribes. Or did it just take away jurisdiction from the federal government and leave jurisdiction concurrent, tribal and state? That's the question.

California has had a very persistent position on this question and California's persistent view articulated through the state Attorney General's office, has been that Public Law 280 abolished tribal jurisdiction. In other words, when Congress gave jurisdiction to the state, it gave the state exclusive authority. That has not been the position in many other Public Law 280 states.

Both the Wisconsin and the Nebraska Attorney General have taken an opposing view, stating that the tribes did continue to have their pre-existing jurisdiction even after the passage of Public Law 280; and recently, the federal courts have been willing to articulate that view as well.

One very important case came out of the Ninth Circuit in Alaska and involved a voluntary adoptive placement of an on-reservation child in the village of Venetie. Another case came out of the Eighth Circuit, *Walker v. Rushing*, and involved criminal jurisdiction rather than a child welfare matter. Once a court is willing to say that tribes retain criminal jurisdiction, it follows very naturally that tribes would also have civil jurisdiction over child welfare matters. What these cases are saying is that tribal jurisdiction continues.

So what does that mean. First, it means that in voluntary cases, involving on-reservation children, there is concurrent tribal and state jurisdiction, and one way to explain the petition provision is that if the tribe wants to rid itself of the state's concurrent jurisdiction, a petition is one way to do so for these voluntary proceedings. Thus the petition provision is not wholly superfluous. You can still reconcile it with a view that recognizes tribal jurisdiction.

What about the cases involving transfer from state to tribal court where the child is off the reservation, assuming of course that the tribe and the parents don't object to transfer? If the courts are right about the existence of concurrent tribal and state jurisdiction, then of course, this transfer jurisdiction should exist, especially because the provision for transfer in the ICWA doesn't even make any exceptions for Public Law 280 states. So there definitely ought to be available the possibility of transfer from state to tribal court in Public Law 280 cases involving off-reservation children.

Now again, the state may say, "Well, there's that language in the ICWA about petitions. Why is it there? How can there be tribal jurisdiction without a petition?" Again, the tribe can respond, "It's there to clarify, not necessarily to confer jurisdiction."

I want to address the practical issues that exist in the wake of this intersection of Public Law 280 and the ICWA. The most practical problem I see is the problem of making sure there are tribal institutions available to function in child welfare matters, either where the state doesn't have jurisdiction at all—that is, in involuntary proceedings involving on-reservation children—or where concurrent jurisdiction exists, either for voluntary proceedings involving on-reservation children or in transfer cases.

Tribes need to be in a position to take advantage of some of the favorable court rulings. That's going to be tough in a state like California where the BIA has been discouraging the existence of tribal courts. But I think the ICWA presents some real positive opportunities for tribes. And I've been speaking to a number of tribal groups, both in Northern and in Southern California, about this.

One valuable feature of the ICWA is that, when it talks about tribal jurisdiction and tribal courts, it specifically says that these institutions do not have to slavishly mimic non-Indian courts and institutions. For purposes of the ICWA, a tribal court can be any administrative body of a tribe which is vested with the authority over child custody proceedings. It doesn't have to look like a non-Indian court. So the opportunities to establish more traditional institutions are there.

Moreover, the ICWA stipulates provision for a consortia of tribes to confer and petition for either the recognition of, or the assumption of jurisdiction. This feature of the ICWA creates additional opportunities for tribes. Especially tribes that have not had a tribal court for a long time, this is a way to ease into that process and to ask for a more limited form of funding. The ICWA also provides that if a tribe does petition for jurisdiction under the Act and the Secretary of the Interior is disinclined to grant the petition for a number of reasons including the unavailability of tribal institutions, the Interior Department is supposed to provide technical assistance to enable a tribe to successfully petition.

Tribes can thus insist on the kind of help that would be necessary to build tribal institutions. And these tribal institutions can serve as the nucleus for broadly based tribal courts.

Similarly, the provision for consortia offers an occasion for tribes to pool resources together, that they might not otherwise think about pooling, in order to assume this jurisdiction. They can test out the consortium idea in a limited setting to determine whether it would really make sense for a larger tribal court system that would be based on a consortium.

There are of course, inter-tribal courts of appeal already in existence in many parts of the country. I'm aware of an Inter-Tribal Environmental Protection Agency in Oklahoma. The pooling of tribal resources is something that tribes are testing. Such concerted action is a delicate matter because it involves conceding certain amounts of sovereignty to other tribes. It's a reciprocal process, though, so each tribe is giving and getting.

Honorable William Thorne: There are also judges that freely go back and forth between court systems, they just change hats.

Carole Goldberg-Ambrose: Assume different authority with the different hats.

Woman: Well all that sounds nice and fine. However, when the ICWA was passed, it incorporated certain provisions to carry out these obligations. It seems like California is on the last frontier in receiving BIA dollars. I can sit here and complain that Congress needs to appropriate more money, but I think the Bureau really needs to start listening to what the tribes want and really think about how consortia would work.

Honorable William Thorne: What you have to do is seek funds other than the Bureau.

Woman: But is that not the Bureau's responsibility?

Honorable William Thorne: Oh sure it is, absolutely. But if they're not going to do it, you should find somebody else who will. And telling the Bureau, "It's your responsibility" has never gotten them to spend a dime.

Carole Goldberg-Ambrose: This is a major source of frustration. Speaking with Indian groups in Southern California, I've learned that the Bureau has been using some tribal education money to fund state law enforcement on some of the reservations. There were complaints about lack of law enforcement, and one of the ways the Bureau responded was by diverting federal monies to contract with the Sheriff's Departments in San Diego and Riverside to provide a service that the states are obliged to provide under Public Law 280 in any event.

The point I've been making repeatedly, both to the tribal members and to Bureau people there, is if that money is available, pay it to the tribes to set up their own system or at least to contract with the state to enforce tribal law, rather than to reaffirm or reinforce the sovereignty of the state in this setting.

It may also be possible to work something out with the state in these tight monetary times where the tribe can say, "Look, we can do this cheaply than you can. Give us some money and we'll save you some money." Now in a state like California, where they're just so hell-bent on asserting state sovereignty wherever possible, that may not be an easy sell. But the budget is getting worse and worse and tribal jurisdiction may start getting more and more attractive.

Honorable William Thorne: Maybe you could do it on a county-by-county basis.

Carole Goldberg-Ambrose: Possibly.

Woman: If you're going to talk sovereignty, tribal government versus federal government, somewhere along the way you're wasting time when it comes to law enforcement. All that means is that the law enforces who is in charge, who isn't in charge, who is in charge of security, who is not in charge of security—nothing gets done. In these particular areas, what you have is a certain amount of gun-running and a certain amount of drug problems. No one is in charge at this point. What the tribal government is saying is, we want sovereignty because we've got to waste time dealing with the federal government We're not only dealing with the U.S. government, we're dealing with the Canadian government.

I think what I'm hearing is that everybody who is in any kind of responsible position has to take a position within the tribe as to what they want to do and save money at the same time. I am really interested in the tax structure. Now what is being said about law enforcement on these reserves is that they are wasting an awful lot of taxpayer dollars. Our federal government has no problem spending $112 million and sending in an army. But it had an awful lot of problems to spend $200,000 to solve these same problems.

Carole Goldberg-Ambrose: Well, I think putting some of these issues in dollars and cents terms is increasingly an effective thing to do.

Woman: That's where I'm at.

Honorable William Thorne: I think there are some things too, at least in small communities that you can do that don't cost a lot of money. You can set up the administrative body without paying salaries. If the community is truly interested in controlling what happens to their kids, you can afford volunteer workers in judgment of placements. You have a half dozen kids in placement, once or twice a month, you sit and you review the cases and make sure somebody is doing what's supposed to be done, and you do it on a volunteer basis.

It costs the price of a cassette tape to record the proceedings. So you don't need to have a lot of money. Obviously the more you have, the better you can do with it. It shouldn't stop you just because somebody doesn't want to provide funding for you.

Carole Goldberg-Ambrose: Let me suggest some broader advantages of this gradual approach. In discussions that I've had with Southern California groups about Public Law 280, I hear a lot of talk about retrocession. It's true that you have to get the state to go along with retrocession. But first you need a tribal consensus to want to take that initiative and to pressure the states before you can even think about the state going along. One of the things that asserting authority in child welfare matters does is that it gives the tribe experience and some feel for whether it wants to support retrocession.

Honorable William Thorne: That you're committed to it.

Carole Goldberg-Ambrose: Right.

Honorable William Thorne: And it becomes harder for the Bureau to say no. If they know you're going to accept no for an answer, it's easy to say no.

Carole Goldberg-Ambrose: But this is my toe in the water theory.

Honorable William Thorne: One of the ways of trying to get some of the money, as an alternate theory, are what are called Interest on Lawyer's Trust Funds (ILTF) accounts. They have a history of spending money on novel community concepts. Not large amounts of money, but they may be willing to fund a couple thousand dollars to a community-based program that is interested in dealing with children. It maybe worth exploring that.

Carole Goldberg-Ambrose: I think maybe we should explain what those funds are.

Honorable William Thorne: Lawyers have to deposit the trust funds when they have clients. They win an award, a $1 million case for example, it goes into a bank account. And the lawyer doesn't get the interest on it. The interest goes into what is basically a charity account, and then they decide where that money will be spent. If enough lawyers contribute, it adds up to quite a bit of money. I would imagine California has several million dollars that they spend every year on that kind of thing.

Carole Goldberg-Ambrose: At least.

Honorable William Thorne: And they are generally open to novel approaches that deal with community justice concerns. It is a way to polish up the image of lawyers and the Bar Association by doing something unusual, but that is good P.R.

They might be willing to spend some of that money. If you have a community that's genuinely concerned about doing it and you can do it for a couple thousand dollars, they might be willing to give that to you as a demonstration project. I don't know that they would be willing to fund the entire state to do that but if you have a community that is going to have volunteers serve as administrative board members and you simply want to pay somebody to keep track of the files, a clerk or something, they might be willing to fund that.

Carole Goldberg-Ambrose: That's a great idea.

Woman: Also fitting into the discussion, I don't know if you were planning to cover it later on, but the phrase, "good cause to the contrary," we frequently hear that in cases that we're contesting. However, I never know just what "good cause to the contrary" means. Usually it has to do with mental health. And in our cases generally, an opposing psychologist or psychiatrist is brought in that uses, the old bonding theory or mental instability on the part of the child or something like that, which we may not agree with. Does "good cause to the contrary" actually mean those kinds of things?

Honorable William Thorne: It's just about anything the judge wants it to be. There's a lot of discretion, and all you have to do at that point is try and convince the judge that the child really is going to be better off in an Indian home. It's a buzz word, judges say "No, I don't trust what's going on." You have got to get over the judge's prejudices and educate the judge.

Also, you have to exercise the exclusive jurisdiction the press has been talking about, and then you don't have to deal with good cause. You're dealing with kids who live within the reservation and there is no good cause for removal. And that might be a good place to start. Demonstrate that you can do it. Then it gets tougher then for the judge in the neighboring county to say "good cause" when there's an up and going administrative board in existence and doing well.

Carole Goldberg-Ambrose: Now what they're supposed to be taking into consideration in deciding on good cause is the choice between the two court systems or two decision-making systems. But I agree with Judge Thorne that this is a real catch-all for lots of things that may make the judge feel comfortable or uncomfortable about relinquishing a case. Often they take into account things like where the witnesses are going to be. If the case is going to get transferred far away from the witnesses, then that's often one of the things that gets factored into good cause.

Honorable William Thorne: There are always ways around it if the judge wants to do it. If a judge doesn't want to do it, that frequently is a shield they hide behind. I've heard of any number of cases where they transferred the case and the tribal court went hundreds of miles to hold court someplace else because that was the requirement of the state judge. So if you want to do it, there are ways to do it. If you don't, good cause is how it should be labeled. Even that's educating and convincing the judge. The children will be taken care of well. That's really what it boils down to. Convince them or educate them past their prejudices.

Man: In an area like Los Angeles, there are, conservatively speaking, 90,000 Indians, many without any tribal affiliation. Those that do have tribal affiliation are so far removed from reservations that it really has no effect on their lives. Instead, Indians tend to organize around local community groups or organizations. For example, my wife and I are involved with the Southern California Indian Center, one of the large ones.

The idea of consortia is very appealing in this type of situation where there is a very mixed tribal association. Would a consortium of agencies or organizations be at all conceivable to apply for some type of tribal court organization?

Honorable William Thorne: I would say probably not, unless you can get the sponsorship of a tribal government someplace to handle their kids. For example, if Navajo is willing to appoint the consortium as their juvenile referee for handling cases for all the Navajo kids, then that would work. But you need some governmental authority to carry into it. You can't do it just as a community organizing group.

Man: Then how would it work if it's several different tribes?

Honorable William Thorne: For example, maybe Southern California had lost a small child when they all get together and set up a tribal court circuit. It's never going to cover all the other Indian tribes or cover all their members. The only way to cover the other ones is to get a designation. Then from Navajo, for example, to appoint that consortium to handle their cases and get the designations from Ute, Sioux and other groups that their children should be handled by their designated referee for juvenile members in Southern California.

Man: Applying their own particular tribal law.

Honorable William Thorne: That's right.

Man: And having to supply, perhaps, even an advocate from their reservation if no one else knew.

Honorable William Thorne: Or maybe just the community can supply that. But it would have to have, I would think, the mantle of a government. You can't do it just as a community group.

Carole Goldberg-Ambrose: Let me just add one thing to what you said. Typically what happens if you have an Indian child who hasn't lived on the reservation and doesn't have family members who are likely to be the people with whom the child would be placed. Typically in those situations, the tribes have declined the transfer.

Honorable William Thorne: And if they had someplace close that they could trust to handle it, they might be inclined to accept more and let cases be handled locally more often. Because the tribe doesn't want to disrupt those kids' lives any more than anybody else does. Bring them back, try it, and then ultimately place them back there. But if they had some sensitive community people who could watch the placement and make sure the children will be taken care of, they might accept quite a few more and handle them locally where the child is.

Man: The other question involved the language of the petition statute in the ICWA. The language says "reassume jurisdiction." To me that implies that there was jurisdiction to begin with, not that there was no jurisdiction.

Carole Goldberg-Ambrose: Well, but that could be there was jurisdiction before Public Law 280. And that's the source of the argument that Public Law 280 eradicated jurisdiction, and tribes have to reassume it.

Man: Okay, so then that means it could be jurisdiction dating back to the first recognition of jurisdiction in 1600?

Carole Goldberg-Ambrose: Well or any date before 1953.

Honorable William Thorne: One practical problem with the resumption petitions is just the length of time it takes the Bureau to do it. LeRoy Wilder was telling me at lunch the other day that he represents a reservation in Alaska—I think it may be the only reservation in Alaska. They had a resumption petition on file with the Bureau for three years and can't get any action out of them. So there are practical problems, but don't let that dissuade you. I just don't want you to have dreams in your eyes that there may be a solution. Dealing with the Bureau is a frustrating process.

Man: Is there a statute of limitations? Can a petition become stale and you have to renew it?

Carole Goldberg-Ambrose: No. At some point, however, you might have to actually go to court to compel them to act.

Honorable William Thorne: You may have to force them to consider it and act. And then you can appeal an unfavorable ruling.

Carole Goldberg-Ambrose: But that's why I've been trying to elaborate these points about how the tribal jurisdiction exists even without the petition.

Man: So that you don't get hung up on the petition.

Carole Goldberg-Ambrose: Right.

Honorable William Thorne: I know California has been working for two years to try and come up with an agreement. Perhaps there is a way around that, where you can actually start something and build from there. You don't have to wait to have all the problems solved before you start.

Carole Goldberg-Ambrose: I think that may help the agreement along.

Honorable William Thorne: Oh, certainly it will push it along if they know you are gong to follow-up on the petition. I'm enough of a cynic to think that you'll never get all of the problems solved. Especially in an area as diverse as California with counties, diversity and groups. I love the idea of starting small, claiming exclusive jurisdiction for the ones who happen to live on the reservation, and setting up an administrative board of volunteers, some minimal funding and start.

I would imagine that there are juvenile court judges, certainly lawyers, who would volunteer their time to act as advisers, as long as it wasn't burdensome, once a month or something. Act as an advisor on "What do you do with this kind of a case? What services are available?" I think this is a way of starting this process and running with it. If you have a community that's made a decision, put some effort into protecting the kids.

Carole Goldberg-Ambrose: Go to places like the UCLA American Indian Study Center.

Honorable William Thorne: Lots of volunteers who are willing.

Carole Goldberg-Ambrose: By the way, I don't want to impugn every single state just by taking out after California because, as I had indicated, Nebraska and Wisconsin have Attorney Generals that have basically structured the case for tribal jurisdiction, and Minnesota enacted something called the Indian Family Preservation Act which basically provides, "As a matter of state law, we adopt this view of the Wisconsin Attorney General that there is tribal authority." Minnesota is a Public Law 280 state.

Honorable William Thorne: California may even have an advantage because each county delivers social services separately. Utah has made all social services available to the tribes at no cost. You might be able to convince a county to extend social services to five or six kids that the community deals with on an exclusive basis. It's not a burdensome debt for them. You start it and you get one to do it, and another is willing to look at it. It's a building process that you don't need to involve everybody in and certainly is easier on a county basis than a statewide basis. It's one of the first things I've been excited about in a long time. There's some hope.

Woman: Tribal affiliation simply means you know which tribe you come from. You may not know originally where your parents came from, but you do have an affiliation, it doesn't matter where you live. Then the tribe, of course, has to pay for your bills wherever you live in Canada. So they do try to follow you wherever you are. It is the responsibility of the parents to register their children and then determine what their affiliation is. This has become very important, because in one particular reservation in the Northwest Territories, what has happened is that fifty families control the area, and because they're extremely wealthy, they do not want to recognize anybody else as affiliated with that reservation. They can do that through the tribal government legislation that they have.

Carole Goldberg-Ambrose: Well you're identifying a problem that some U.S. tribes experience as well, because of the history of what led up to the particular structures of different recognized tribal governments. It's one of the great dilemmas that people who are involved with Indian law confront, which is that on the one hand there is this very important tribal sovereignty that needs to be asserted in the fact of threats to it from outside governments, the state and the federal. On the other hand, there are sometimes internal problems that arise, because the tribal governments that are exercising this sovereignty are often hybrid creations of federal pressure of one form or another, and the internal problems need to be resolved internally, or else these outside threats are going to take advantage of them.

Any other questions or concerns that anyone wants to express about Public Law 280? I'm very eager to see tribal jurisdiction in child welfare matters assert itself in Public Law 280 states. Whether it's through getting Attorney General's opinions or state statutes passed, as in Minnesota, through agreements or the just-do-it approach, which I think is probably the one that is most likely to occur in a place like California. I think the opportunities are here, and there are opportunities, that extend beyond the value of child welfare proceedings. These opportunities relate to the whole question of long-term retrocession of jurisdiction and the building up of tribal institutions generally.

So I hope this opportunity will present itself in concrete ways, and I'm here at UCLA and work with the American Indian Studies Center (AISC), and if groups are interested in bringing ideas to the AISC, I'm sure that there are people who would be interested in providing assistance.

MOCK COURTROOM

Surviving The Courtroom

(Friday, January 17, 1992)

Facilitators: Honorable William Thorne; Leroy Wilder, Esq.

Honorable William Thorne: What we're going to be trying to do this afternoon is demonstrate for you some problems that may be encountered in getting experts to testify and having professionals testify. It's going to be unofficially cut short so that we can get this all done within the time frames. So, lawyers will basically be arguing while trying to get the witnesses qualified as experts. So that you know who the cast of players are on the situation, Leroy Wilder State's attorney, will be playing the role of Darth Wilder. Chris Stearns will be the legal services attorney just out of school, his first trial, and who will be playing the role of Chris Skywalker.

This situation involves two brothers. John who is six and his younger brother Mike who is four. Their mother is serving her second term in prison and currently has five to ten years more to go. Mr. Skywalker's client is Grandma Wants Kids. She has been trying to obtain custody of these children since they have been in placement. These kids have been in placement most of their lives. John has been with one set of foster parents for the last three or four years, they have been relatively stable. He seems to be doing well. Mike is younger. He's four. He has medical and developmental disabilities, some of which were life-threatening when he was younger. He's bounced around between eight and ten foster homes. He's been in the last foster home for a year and a half, and within the last six months has started to blossom. He's coming alive, starting to recover some of the deficits, both medically and developmentally that he has. And the two sets of foster parents are being represented Ms. Has Kids. The names are fun, but this is from a real case that was ultimately transferred from the state courts to the tribal courts.

Grandmother and the children are Blackfeet tribal members from Montana. The witnesses will be an academician, a clinical psychologist, a caseworker who has worked with the kids and an elder from Blackfeet. We will show the different kinds of roles and how it works out. Hopefully this part will take about an hour and then the witnesses will tell you some of the things that they have learned about how to survive practically in a courtroom, what to do and not do in terms of getting ready. The attorney will give you some hints about what works and doesn't work in a courtroom. And then we'll plan on having enough time left to throw it open to questions. So if you have a question about why something was done or if you have a question about how something might be done differently, feel free to ask us. Counsel, are we ready to begin?

State's Attorney: Yes, your Honor.

Legal Services Attorney: Sure, your Honor.

Honorable William Thorne: Just a moment counsel. This is a court resuming in session. We have previously heard testimony from the State's witnesses, Dr. Knows It All, who is a clinical psychologist and who has worked with these kids. And from Ms. Bleeding Heart who is a caseworker. These witnesses have already testified and now Grandma wants to get a turn to present her witnesses. Mr. Skywalker.

Legal Services Attorney: Your Honor, at this time the tribe would like to call Dr. Wines.

State's Attorney: Your Honor, before we start this afternoon's session, I would like to make a motion to exclude witnesses from the courtroom except for the witness on the stand.

Honorable William Thorne: Okay. Mr. Skywalker if you could have all of your witnesses stand, let's have them sworn in. If you'll raise your right hand. Do you solemnly swear by the force you'll tell the truth? You're going to be excluded from the courtroom and called in one at a time to testify. You're not to discuss the case with anybody, not even each other until the hearing is completely over. If you violate that instruction, you're subject to contempt of court and there is the possibility of jail or fine or both. Any questions about that at all? Then I'll ask the witnesses to wait outside. And you wanted Dr. Wines to testify first.

Legal Services Attorney: Yes.

Honorable William Thorne: Doctor, if you'll come up, I'll ask the other two witnesses to wait outside please. Those people can come in. Anybody else who wants to join the jury, there are still a couple of seats. Mr. Skywalker.

Legal Services Attorney: Dr. Wines, please state for the court your full name and address.

Dr. Wines: My name is Dr. Carol Wines and I live at 210 Main Street in San Francisco, California.

Legal Services Attorney: And do you have a doctorate or Ph.D. in Psychology.

Dr. Wines: Yes I do.

Legal Services Attorney: Are you familiar with the adoption of Indian children.

Dr. Wines: Yes I am.

Legal Services Attorney: Your honor, at this point, the tribe would like to move that Dr. Wines be qualified as an expert to testify on the psychological theory behind the placement of the children in this case.

State's Attorney: Your Honor, I'd like to object to the qualification of this witness as an expert and have the opportunity to ask her some questions if I might.

Honorable William Thorne: You may ask the witness questions.

State's Attorney: Dr. Wines, you have a Ph.D., is that correct?

Dr. Wines: That's correct.

State's Attorney: So I take it that means you also have a Masters in something, is that correct?

Dr. Wines: That is correct.

State's Attorney: Which probably means that you also have a Bachelor's in something.

Dr. Wines: That is correct.

State's Attorney: So you have quite a number of degrees along with your high school education and your grade school education. Let me ask you this Dr. Wines, in your work as a clinical psychologist, have you had any experience working with Indian families.

Dr. Wines: Yes I have.

State's Attorney: And that experience, as I understand it from looking at your resume, is you worked with two Indian families.

Dr. Wines: That is correct.

State's Attorney: And your experience then is you have no real practical experience dealing with the three hundred or so Indian tribes that exist in this country. Practical experience Doctor.

Dr. Wines: I'm not sure what you mean by practical. Can I ask you to clarify.

State's Attorney: You haven't worked with Indian families hardly at all have you Doctor?

Dr. Wines: That is correct.

State's Attorney: Okay. So what we're talking about here is that you would like to testify based on you understanding of the academics of child psychology.

Dr. Wines: That is correct.

State's Attorney: And the academics of child psychology might be put in another way, the theory of child psychology.

Dr. Wines: That would be correct also.

State's Attorney: Okay. So you're going to be asked to testify on the behalf of the tribe with regard to theory.

Dr. Wines: That would be correct.

State's Attorney: Incidentally, the Blackfeet Tribe has hired you to be a witness in this case have they not.

Dr. Wines: That is true.

State's Attorney: Would you mind telling the court how much they're paying you.

Honorable William Thorne: Would you speak up to make sure everybody can hear you.

Dr. Wines: Five hundred dollars an hour.

State's Attorney: Okay, so you're here being paid five hundred dollars an hour to tell the court about the theory?

Dr. Wines: That is correct.

State's Attorney: And you've worked with two Indian families. Were either of those families Blackfeet families?

Dr. Wines: No they were not.

State's Attorney: Do you know which tribe they were from?

Dr. Wines: Yes. One family was Winnebago and the other family, I believe, was from India.

State's Attorney: So if I might summarize your testimony Doctor, you're here being paid five hundred dollars an hour and you've worked with one north American Indian family and that's the extent of your Indian experience.

Dr. Wines: That would be correct.

State's Attorney: And I take it that you have not met with Johnny and Mikey then?

Dr. Wines: No, I have not.

State's Attorney: Okay, have you met with Mrs. Wants Kids, this lovely lady sitting here?

Dr. Wines: No, I have not.

State's Attorney: Okay. Mrs. Has Kids, excuse me. And you have not worked with or had any direct contact with Ms. Wants Kids sitting here?

Dr. Wines: No, I have not.

State's Attorney: So we are going to talk about theory then, your theory.

Dr. Wines: That is correct.

State's Attorney: Now when we talk about theory, that means, as I understand it, please correct me if I'm wrong, that hypothetically in any given case, a certain set of circumstances might create a certain result.

Dr. Wines: That is true.

State's Attorney: And as opted with theory, there are exceptions to the theory.

Dr. Wines: That is correct.

State's Attorney: And you have a theory about this case don't you?

Dr. Wines: Yes I do.

State's Attorney: And you've had no direct contact with anyone involved in the case?

Dr. Wines: That is correct.

State's Attorney: So you're here today, paid five hundred dollars an hour, to tell the court what you think might happen in this case?

Dr. Wines: That is true, based on research.

State's Attorney: Based on research. And no practical research. Your Honor, I would like to suggest to the Court at this time, that this witness is not qualified to offer any pertinent testimony in this proceeding and that her testimony ought to be excluded and that she certainly ought not to be qualified as an expert to testify.

Honorable William Thorne: Mr. Skywalker.

Legal Services Attorney: I'd like five minutes to ask a few more questions in light of new foundations, and share that she is qualified as an expert.

Honorable William Thorne: I'll give you that chance. Go ahead.

Legal Services Attorney: Dr. Wines, you stated that you are a doctor. Could you please tell us how you became a doctor?

Dr. Wines: Yes. I have a Bachelor's degree and a Master's degree in Clinical Psychology from the University of Wisconsin in Madison. After that I entered a Ph.D. program at Oxford University which I have completed. I did a one year internship at the Camp Clinic in Denver, Colorado which is a clinic that specializes in the treatment of abused and neglected children, most of whom are from non-white ethnic groups. In addition to that, I've done a two year residency at the Mount Zion Hospital here in L.A. where, there again, a great deal of our clients come from non-white ethnic groups. I'm also a board certified clinical psychologist with a specialty in child clinical psychology. To get a specialty in this area, you must do a one year residency of closely supervised work directly with children and families. This is an area of specialty that is recognized by the Board of Professional Psychologists.

Legal Services Attorney: Could you tell us more about your specialty?

Dr. Wines: Okay, in addition to my specialty in child psychology, I've been very interested in the issues of cross cultural psychology and while I have not worked directly with many Indian families, I have done research in that area and have attended numerous seminars on that issue. One person in particular, I've read his material and attended his seminars is Dr. Samuel Rolls. He is considered to be an expert in issues of Indian Child Welfare and has extensive experience working with this group.

State's Attorney: Objection to the characterization of expert. There is no foundation for that testimony your honor.

Honorable William Thorne: Mr. Skywalker, your response.

Legal Services Attorney: I don't think we need to go into whether he is an expert or not.

Dr. Wines: In addition, Dr. Samuel Rolls has done extensive work with American Indians.

Legal Services Attorney: Could you tell us more about the theory of cross cultural childhood development?

Dr. Wines: The theory of cross cultural child psychology includes some of the standardized testing that is done with children, but in addition you must take some other factors into consideration. One consideration that must be taken into concern is what we call identification. This simply means that children who frequently grow up in a white culture or society and are not from that group tend to grow up with very negative or hostile attitudes about themselves and research shows this to have been proven true with Indian children. Children that grow up in these homes will experience numerous problems, often during adolescence. They may do very well in their homes when they are young. And the problems may not surface until they become adolescents and a whole new sense of self identity becomes apparent. Research shows that children who are raised in non-ethnic homes as their own or Indian children raised in non-Indian homes have a suicide rate that is twice that of Indian children who are raised within Indian homes.

Legal Services Attorney: Are you familiar with the facts in this case?

Dr. Wines: Yes I am.

Legal Services Attorney: And how did you become familiar with the fact?

Dr. Wines: I've had a chance to review all of the court records that pertained to this case. I have also had a chance to review the psychological assessments performed by Dr. Knows It All, as well as to interview Dr. Knows It All in person.

Legal Services Attorney: The last thing I'd like to ask, if you do not know the children in this case, how will you be able to tell the court what needs to be done?

Dr. Wines: Again, based on theory and based on the circumstances. The facts in this case are very similar to many other cases that have happened in the past where Indian children have been placed in non-Indian homes, the high probability of the behaviors may be seen later in life and in ultimate outcomes.

Legal Services Attorney: Thanks. Your Honor, at this time, I'd like to move that this witness be qualified as an expert to testify on the theories of cross cultural childhood.

State's Attorney: Your Honor, I'm going to renew my objection and I'd like the court's indulgence to ask just a couple more questions.

Honorable William Thorne: Go ahead counsel.

State's Attorney: Dr. Wines, it would be fair to say, wouldn't it, that psychologists and doctors and experts in this field often disagree as to what might be the result of a particular case?

Dr. Wines: That would be correct.

State's Attorney: Okay. And so Dr. Knows It All has given an opinion to the court in this case which is not necessarily wrong then, is it?

Dr. Wines: I do not believe it is wrong, but I do not believe that he took into consideration all of the issues that need to be taken into consideration when you are making an evaluation and an opinion on American Indian children.

State's Attorney: So he didn't take into consideration the theory that you espouse here today, is that correct? Is that what you're saying?

Dr. Wines: That would be what I'm saying. Yes.

State's Attorney: You're Honor, I'm going to, once again, suggest to the court that this witness has a theory with which she has no practical experience nor direct knowledge to apply it to. She is not qualified to be an expert in this case.

Legal Services Attorney: Clearly she knows a lot about the theory, the theories applicable in this case, and what more needs to be done.

Honorable William Thorne: I'll allow her to testify. I think that she qualifies under the rules as an expert. She may state her opinion as such. Go ahead Mr. Skywalker.

Legal Services Attorney: Thank you very much. At this point, I'd like to call our second witness.

Honorable William Thorne: Counsel, are you going to ask the witness her opinion, where the kids ought to be.

Legal Services Attorney: Oh. Well.

State's Attorney: Good idea.

Legal Services Attorney: Thanks Judge. Dr. Weins based on your qualifications, could you tell the Court where these children should be placed?

State's Attorney: I'm going to object to this witness testifying where these children should be placed. This witness can testify as to where Indian children should be placed under a theory. There is no basis for her to testify where these kids should actually be placed.

Honorable William Thorne: I'll sustain that objection.

Legal Services Attorney: Okay. Then would you be able to tell us where Indian children should be placed? Should they be placed in a non-Indian home or in an Indian home?

Dr. Wines: Whenever possible, children of any race should be placed with family. And with Indian children, I think it is particularly important that they be placed with family first if that's possible. If that is not possible, that they be placed with an American Indian family.

Legal Services Attorney: Thank you very much.

Honorable William Thorne: Ordinarily, counsel would be entitled to inquire in depth. Opposing then would be entitled to examine in depth. For the purposes of this proceeding though, we're going to stop here and go to the next witness. Counsel, you may call your next witness.

Legal Services Attorney: Your Honor, at this time, we'd like to call Ms. Hopper.

Honorable William Thorne: Dr. Wines, if you'll ask Ms. Hopper to come in please. Ms. Hopper, if you'll come forward and have a seat please, I'll remind you that you've been previously sworn and are still under oath.

Legal Services Attorney: Thanks for coming Ms. Hopper. Would you please state for the Court, your full name and your address.

Ms. Hopper: My name is Eileen Hopper and I live at 1335 Broadway, Walnut Creek, California.

Legal Services Attorney: Ms. Hopper, what is your educational background?

Ms. Hopper: I have a Bachelor's degree in Psychology and I have a Master's degree in Social Welfare.

Legal Services Attorney: And what is your current position?

Ms. Hopper: I'm employed as a child welfare worker.

Legal Services Attorney: And are you familiar with Indian families?

Ms. Hopper: Yes, I am.

Legal Services Attorney: Your Honor, I'd like to move that this witness be qualified as an expert.

State's Attorney: Your Honor, this young man just doesn't learn. I'm going to object to that and ask for the opportunity to ask some questions of Ms. Hopper.

Honorable William Thorne: I'll allow you to examine her qualifications.

State's Attorney: Thank you your Honor. Is it Dr. Hopper?

Ms. Hopper: No, it is not.
State's Attorney: So you're not a Doctor?

Ms. Hopper: No.

State's Attorney: So, I take it then that your degree is just in General Child Welfare, you have no specialized training?

Ms. Hopper: No.

State's Attorney: And my understanding is that you have not visited the Blackfeet reservation?

Ms. Hopper: No, I have not.

State's Attorney: And that you do not know or have not talked to or had any direct contact until today with Ms. Wants Kids?

Ms. Hopper: No, I haven't.

State's Attorney: So you're here today to testify about the placement of Indian children on the Blackfeet Indian Reservation. And you've never been there and you haven't talked to anybody that lives there, is that correct?

Ms. Hopper: I've talked with the tribal social worker who does that.

State's Attorney: But not the family where these children will be placed?

Ms. Hopper: No.

State's Attorney: Okay. Now, no specialized training and no contact with the Blackfeet Indian Reservation. But I take it that you want to testify that these children ought to be placed there with Ms. Grandma Wants Kids. Is that correct?

Ms. Hopper: Excuse me, would you say that again.

State's Attorney: So you have no experience with the Blackfeet Reservation and no experience with Ms. Grandma Wants Kids but you're here today to testify that that's where the kids ought to go?

Ms. Hopper: Yes.

State's Attorney: Now you are aware, are you not Ms. Hopper, that these children have bonded with their foster families?

Ms. Hopper: Yes, I'm aware of that.

State's Attorney: Okay. And in fact, you've worked very closely with Ms. Has Kids and would have to testify that she's a wonderful foster mother, and father as well, with the child?

Ms. Hopper: Yes.

State's Attorney: Okay, so we've got what you would have to characterize as a very fine placement right here in southern California. Is that not correct?

Ms. Hopper: I'm sure it's a fine place but I feel that the children would be better off with the Blackfeet.

State's Attorney: Oh, you think they will be better off at Blackfeet?

Ms. Hopper: Yes.

State's Attorney: You have no real way to determine that other than you just think that Indian children ought to be with Indian families. Is that correct?

Ms. Hopper: Based on my experience in working with Indian families and children, yes, I do believe that.

State's Attorney: Okay, so you have a bias?

Ms. Hopper: Yes I do.

State's Attorney: And without any direct knowledge of what that placement will mean in this case, without any specialized training to determine what that placement will mean in this case, and knowing full well that these children have bonded well with their foster families, you are suggesting that these children should be wrenched from their homes and taken to a strange place, a place with strange people. Is that correct?

Ms. Hopper: I believe the children should be in an Indian home. They should be with their relatives.

State's Attorney: I know what you believe. I know what your bias is Ms. Hopper. The answer is yes or no. Are you bound and determined to testify that these children ought to be wrenched away and placed in a strange place?

Ms. Hopper: Yes.

State's Attorney: Your Honor, this witness has no specialized training in child psychology or anything that would lead her to be able to give a conclusion as to what's going to happen here. She's just testified that she has no knowledge of what will happen to these children when they get to Blackfeet. And I would suggest that she cannot be qualified as an expert in this proceeding.

Honorable William Thorne: Mr. Skywalker.

Legal Services Attorney: Your Honor, I'd like to ask her a few more questions to show that she does have some knowledge and should be qualified as an expert.

Honorable William Thorne: I'll give you a chance to demonstrate that. Go ahead.

Legal Services Attorney: Ms. Hopper, will you tell us how long you have been working in your field.

Ms. Hopper: Approximately three years.

Honorable William Thorne: Could you speak up.

State's Attorney: I'm sorry I didn't hear the last answer.

Ms. Hopper: Three years.

Legal Services Attorney: Could you tell us approximately what the number is of Indian families you have worked with?

Ms. Hopper: I'd say it was approximately a hundred.

Legal Services Attorney: And a lot of those, how many were around the approximate age of the children?

Ms. Hopper: I'm sorry.

Legal Services Attorney: How many of those cases were involving placement of Indian children?

Ms. Hopper: All of them.

Legal Services Attorney: And would you say that you're familiar with Indian culture?

Ms. Hopper: Yes, I am.

Legal Services Attorney: Could you tell us how you gained that familiarity?

Ms. Hopper: Well, first of all, I'm an Indian person myself and I did grow up on a reservation and I'm aware of a cultural heritage from my own personal experience. Plus, I have the experience of working with many families from different tribes.

Legal Services Attorney: Based on the experience in your field, are you familiar with the needs of Indian children?

Ms. Hopper: Yes, I am.

Legal Services Attorney: And could you tell us what some of those needs are?

Ms. Hopper: Well, some of the needs that they may have is to be in an Indian placement where they can know, first of all, their tribe, their family, so they can know their cultural heritage and the richness of it. To be able to participate in cultural ceremonies, social gatherings, religion, etc.

State's Attorney: Your Honor, I'm going to object at this point. I believe we're perilously close to this witness giving her opinion without being qualified and I renew the objection and suggest that Counsel stick to qualifying this witness.

Legal Services Attorney: Let me ask another question.

Honorable William Thorne: I'll allow counsel to proceed subject to a motion to strike if you can't establish that this is part of the foundation that you're laying for her expertise.

Legal Services Attorney: I'm trying to show that she is an expert in Indian family and children.

Honorable William Thorne: Go ahead.

Legal Services Attorney: Are there any special needs that Indian children have that would not be met if they were placed in a non-Indian family?

Ms. Hopper: Yes. When an Indian child is in a non-Indian family, this child does not have a chance to know their own cultural identity.

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State's Attorney: Your Honor, I renew the objection and move to strike all of the testimony that has come in. This witness is not testifying about her qualifications. She's testifying as to her opinion about where these children ought to be placed and she should stick to her qualifications.

Legal Services Attorney: I'm not after her opinion. I'm trying to show she has knowledge of Indian children placements.

Honorable William Thorne: I'll give you a chance to show the basis for this. Where does this knowledge come from? If you can establish a basis, then I'll allow her to testify about the concerns that she has.

Legal Services Attorney: Ms. Hopper, if you've never been to Blackfeet, how do you know what will happen at the Blackfeet Reservation? What sort of knowledge do you have and where did you gain that knowledge?

Ms. Hopper: Okay. A lot of that, again, is from my own personal experience in being an Indian person and living on a reservation. And I'm also in contact with the tribal social worker there who can give me more information about the specifics of the family and kids and the case.

Legal Services Attorney: Earlier, Mr. Wilder asked if you had a bias towards Indian placement and you responded that you did. Could you please tell the court why you have that bias?

Ms. Hopper: Well, I have that bias because I believe in the Indian Child Welfare Act (ICWA), which states that Indian children should be placed in Indian placements. Children have special needs and it's been shown that if Indian children are not raised within their own culture, when they grow up into the teenage years, there are often very negative effects associated with having grown up in a strange culture, like increased rates of suicide, loss of identity, low self esteem and self worth. They don't know who they are.

Legal Services Attorney: Thank you. Your Honor, at this point, I would like to move that this witness be qualified as an expert to testify based on her experience with Indian families, that she should be qualified to testify on placement of Indians in non-Indian families.

State's Attorney: Your Honor, if I might, just one more question?

Honorable William Thorne: Go ahead.

State's Attorney: Ms. Hopper, you've used the term family many times in your testimony. Indian children and Indian families. That's really what we're talking about here is family. Is that correct?

Ms. Hopper: Yes.

State's Attorney: Now, would you agree with me if I stated that the most important family that we're talking about in this proceeding, the very most important family will be the family where these children spend the next few years, their formative years? The family where they may, indeed, spend the rest of their lives. Isn't that the most important family we're talking about here?

Ms. Hopper: Yes.

State's Attorney: And isn't it your testimony that you have had no contact with that family?

Ms. Hopper: Yes.

State's Attorney: Thank you. That's all I have your Honor. I would renew my objection.

Honorable William Thorne: Mr. Skywalker.

Legal Services Attorney: We're not asking you to empathize on what will happen. You don't know for sure what will happen is that correct?

Ms. Hopper: Yes.

Legal Services Attorney: But you have had experience with other similar situations?

Ms. Hopper: Yes.

Legal Services Attorney: Okay.

State's Attorney: Your Honor, I object to the leading of this witness.

Honorable William Thorne: I'll allow it for foundation purposes. Go ahead.

Legal Services Attorney: How many other similar situations have you dealt with?

Ms. Hopper: I would say out of a hundred cases, probably ninety to ninety five situations like this.

Legal Services Attorney: So do you consider yourself very familiar with these types of situations?

Ms. Hopper: Yes, I do.

Legal Services Attorney: That's all your Honor. I'd like to renew my motion to qualify her as an expert.
Honorable William Thorne: Based on the experience that she says she has with similar situations, I'll allow her to give her opinion. Go ahead.

State's Attorney: Objection for the record your Honor.

Honorable William Thorne: It is noted.

Legal Services Attorney: Ms. Hopper, could you give us your opinion as to what should be done in this case with these children?

Ms. Hopper: In my opinion, I believe these children will benefit from going back to the tribe to live with their grandmother and once the children are actually back there, I will be able to monitor and case manage in conjunction with and in cooperation with the tribal social worker so that the needs of these children are met. These particular children may have special needs. They may need special education. They may need special therapy for some of the issues that they've been through. I would keep contact with all of the professionals in the case, teachers, social worker, psychologists, doctors, if necessary, and I would receive reports and be in close contact with the tribal social worker.

Legal Services Attorney: And so follow up care can be provided?

Ms. Hopper: Yes.

Legal Services Attorney: Fine. Thank you very much.

State's Attorney: You got me your Honor.

Honorable William Thorne: You can step down. Mr. Skywalker.

Legal Services Attorney: Your Honor, at this time, the tribe would like to call our third witness, Ms. Scott.

Honorable William Thorne: If you'll come forward and have a seat please, I'll remind you that you have been previously sworn and are still under oath.

Legal Services Attorney: Good morning Ms. Scott.

Witness: Good morning.

Legal Services Attorney: At this time, could you please tell the court your full name and your address.

Witness: Marilyn Scott, Box 312, Browning, Montana.
Legal Services Attorney: And what is it that you do.

Witness: I'm a tribal elder.

Legal Services Attorney: And what tribe are you with.

Witness: Blackfeet Tribe.

Legal Services Attorney: And you've lived there all your life?

Witness: Yes, I have, for seventy five years.

Legal Services Attorney: Your Honor, at this time, I'd like to move that this witness also be qualified as an expert with regard to the Blackfeet culture and the child rearing practices of the Blackfeet Tribe.

State's Attorney: Your Honor, I object.

Honorable William Thorne: How did I know you were going to say that?

State's Attorney: And would like the opportunity to ask this kind lady some questions.

Honorable William Thorne: Go ahead Mr. Wilder.

State's Attorney: Ms. Scott, you're here today to tell the Court about Blackfeet culture, is that correct?

Witness: Yes.

State's Attorney: Now, you've lived seventy five years on the Blackfeet Reservation?

Witness: Yes.

State's Attorney: And as I understand it, you dropped out of school in the eighth grade?

Witness: Yes.

State's Attorney: So you have no formal training?

Witness: No.

State's Attorney: So, I take it your testimony is that when you get old at Blackfeet, you get to have opinions about things?

Witness: Yes.

State's Attorney: And you've got an opinion that you want to express here, I take it?

Witness: Yes.

State's Attorney: Have you had any contact with little John and little Mikey in this case?

Witness: No.

State's Attorney: These are two Blackfeet children you've never met?

Witness: Right, but they are my children.

State's Attorney: Well, they're this lady's children too. Do you know this lady?

Witness: No, I don't.

State's Attorney: Have you ever met this lady. Have you ever talked to her?

Witness: No.

State's Attorney: Do you have any basis to think that this lady isn't a wonderful mother?

Witness: Oh, I'm sure she is.

State's Attorney: Okay.

Witness: With White children.

State's Attorney: Your Honor, at this point, before I really get kicked in the teeth, I would like to suggest to the Court that with all due respect to age, that is not a basis for an opinion in this case. We're talking about youth here. Children. And I suggest to the Court that the fact that Ms. Scott is an old woman living at Blackfeet has really nothing to do with case.

Honorable William Thorne: Mr. Skywalker.

Legal Services Attorney: I think he's missing the point. We're going to learn about Blackfeet culture.

State's Attorney: Well, that hasn't been asserted your Honor and I would like to renew my objection.

Honorable William Thorne: Counsel, if you can establish a foundation for that knowledge, I'll certainly listen to the argument.

Legal Services Attorney: Sir, earlier I had asked that she be technically qualified as an expert to testify on Blackfeet culture. What does a tribal elder do?

Witness: We're there for everyone in the community. Whenever there's problems, concerns, decisions that they have to make that they don't feel comfortable with, they come to us and ask advice.

Legal Services Attorney: Can anyone become a tribal elder?

Witness: When you get old.

Legal Services Attorney: Well, when you become old and you've lived on the reservation your entire life?

Witness: Yes.

Legal Services Attorney: So in seventy five years, you've learned a lot about Blackfeet culture?

State's Attorney: Objection your Honor, leading the witness.

Honorable William Thorne: I'll sustain the objection.

Legal Services Attorney: Let me rephrase that then. What have you learned about the Blackfeet culture?

Witness: That we are a good people.

Legal Services Attorney: Is there anything more?

Witness: Yes, that we are respectful, we're honest, and we're proud.

Legal Services Attorney: You're a grandmother are you not?

Witness: Yes.

Legal Services Attorney: So could you tell me, do you know about child rearing practices?

Witness: Yes. I have raised five children of my own, several nieces and nephews and some of the children in the community that sometimes don't have a place to go to because of family problems. My home is always open to everyone.

Legal Services Attorney: And do you know other people, other Blackfeet, who have raised children?

Witness: Oh yes.

Legal Services Attorney: You don't know the particular children in this case but you know the family?

Witness: Yes I do.

Legal Services Attorney: And how long have you known the family?

Witness: For seventy five years. But I've known Morning Star for sixty years.

Legal Services Attorney: Great. You stated that you had dropped out of school. Do you think you need an education to know about Blackfeet culture?

Witness: No.

Legal Services Attorney: What can you learn outside of the schools?

Witness: You learn by living. You know, every day you learn something. You learn something from everything around you.

Legal Services Attorney: I don't want to get too personal, but can you tell us what it means to be Blackfeet?

Witness: It means to be very proud, to be able to go to ceremonies, to be around many other people, to go to Sundances, Sweat Lodges, to be around the beautiful mountains, the prairies.

Legal Services Attorney: Do you think it's important that Blackfeet children be raised on the Blackfeet Reservation?

Witness: Yes.

State's Attorney: Objection your Honor, that's asking for an opinion and she hasn't been qualified to give it yet.

Honorable William Thorne: I'll allow it subject to a motion to strike if you can't connect it up.

Legal Services Attorney: Can you tell us what you think is important about Blackfeet children and why Blackfeet children should be raised on the reservation?

Witness: Because the Creator put us there and that is our place on this earth and I feel that every Blackfeet should have a chance to touch the earth and therein to be a Blackfeet.

Legal Services Attorney: Thank you. Your Honor, at this point, I'd like to move that this witness be qualified as an expert to testify on Blackfeet culture and child rearing practices.

State's Attorney: A couple of questions your Honor.

Honorable William Thorne: Go ahead Mr. Wilder.

State's Attorney: You've testified here that Blackfeet children are raised to be honest and proud correct?

Witness: Yes.

State's Attorney: Are you suggesting that children can't be raised honest and proud other than in Blackfeet homes?

Witness: I'm sure they try to raise them that way.

State's Attorney: Now you're characterized Blackfeet land as, pretty much, a paradise?

Witness: Yes.

State's Attorney: You really like it up there right? You like the mountains, the prairies and the fact that you're surrounded by Blackfeet people?

Witness: Right.

State's Attorney: And if you're Blackfeet, you'd probably feel right at home up there?

Witness: Right.

State's Attorney: But if you weren't Blackfeet, you might not feel quite as comfortable, is that correct?

Witness: We try to make everyone feel comfortable.

State's Attorney: But it's not necessarily true that everybody is going to feel comfortable if they're not Blackfeet. You haven't testified that you would like to see everybody touch the earth at Blackfeet land.

Witness: If they would like to.
State's Attorney: So you would like everybody to just move on up to Blackfeet. Now come, Ms. Scott, you don't want a bunch of strangers moving up to Blackfeet, do you?

Witness: Oh, they're welcome.

Legal Services Attorney: Your Honor, I'd like to object. Whether strangers move up to Blackfeet really doesn't have anything to do with this case.

State's Attorney: May I continue your Honor? This is going somewhere and I'll be able to demonstrate that it will in just a minute.

Honorable William Thorne: I'll give you the same courtesy as the other gentleman, subject to a motion to strike if you can't connect it up.

State's Attorney: Right. Now, Ms. Scott, you're a very tolerant person after seventy five years of life. You've learned to accept just about everybody and everything, is that correct?

Witness: Right.

State's Attorney: Don't you wish that everybody was like you?
Witness: It would be a better world.

State's Attorney: I agree with you one hundred percent. We agree on that for sure. And I think we can also agree that not everybody is as tolerant as you. And in fact, even in Blackfeet land, not everybody is as tolerant as you are.

Witness: Right.

State's Attorney: And if you're Blackfeet, you'd probably feel right at home up there?

Witness: Right.

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State's Attorney: I agree with you one hundred percent. We agree on that for sure. And I think we can also agree that not everybody is as tolerant as you. And in fact, even in Blackfeet land, not everybody is as tolerant as you are.

Witness: Right.

State's Attorney: And, that I think you will have to agree that when these children arrive at Blackfeet, they will be strangers there. It will be strange to them.

Witness: Right.

State's Attorney: You will welcome them with open arms. Grandma Wants Kids will welcome them with open arms. But maybe not everybody will welcome them with open arms, isn't that correct?

Witness: Right.

State's Attorney: Now let me ask this. I think you'll probably agree that they're not very many Black people that live on the Blackfeet reservation?

Witness: Well, we have several mixed bloods and there are some that are mixed with Black.

State's Attorney: Okay. And for you, you can accept these people and be very tolerant?

Witness: Yes. I have a niece and nephew who are Black and they are a part of our family.

State's Attorney: And we agree that if everybody was like you that would be a perfect world?

Witness: Right.

State's Attorney: But it's not. Everybody is not like you. Is that correct?

Witness: Right.

State's Attorney: And the fact that one of these children appears Black is going to make a difference in that child's life at Blackfeet, isn't it?

Witness: I don't feel it will make a difference.

State's Attorney: But you're a very tolerant lady, isn't that correct?

Witness: Yes.

State's Attorney: And not everybody is as tolerant as you?

Witness: Right.

State's Attorney: Your Honor, I would suggest that this witness is a wonderful person who has a tremendous knowledge about the Blackfeet culture, I will concede that, stipulate that on the record. But we're talking about moving two children, one of which does not even look Blackfeet, to a strange place and that her opinion, if she be allowed to express it, really has no relevance to this particular placement.

Honorable William Thorne: Mr. Skywalker, why is her opinion relevant to these children?

Legal Services Attorney: Because they will be moving to Blackfeet and we need to know why it's good, why they should move up there. You obviously know a lot about Blackfeet culture and it's great that you're tolerant but it seems like the fact that one of the children appears Black is going to make a difference in that child's life at Blackfeet.

Honorable William Thorne: Mr. Skywalker, why is that an important issue?

Legal Services Attorney: Because the children themselves are Black and you need to know why it's important that they be moved back to where they're from.

Honorable William Thorne: I'm going to allow her to testify as an expert. It's my understanding that the ICWA requires the standard be that of the Indian community which these children belong. So I'll allow her to testify.

Legal Services Attorney: Thank you your Honor. Ms. Scott, based on your experience as a tribal elder, could you please tell the court where, in your opinion, these children should be placed?

Witness: They should be placed with their grandmother.

Legal Services Attorney: And could you please tell us why?

Witness: Because they are her children and they're our future.

Legal Services Attorney: Thank you.

State's Attorney: Is Grandma Wants Kids, is she a tribal elder as well?

Witness: She's getting there.

State's Attorney: And I take it then that you tribal elders of Blackfeet get together and look out for one another, is that correct?

Witness: Yes.

State's Attorney: And so as a tribal elder supporting another tribal or almost tribal elder, you really sympathize, empathize and want to help Grandma Wants Kids?

Witness: I just know that she is a good person. She will do just like she has with her other children.

State's Attorney: And without knowing anything about Mother Has Kids, you're willing to say let's let an old woman at Blackfeet take these kids away from the person who has raised them to this point in their life?

Witness: Yes.

State's Attorney: No further questions your Honor.

Honorable William Thorne: You can step down. Thank you.

Legal Services Attorney: It turns out that there is someone else we would like to call and that is the Blackfeet caseworker.

Honorable William Thorne: How many more witnesses are you going to introduce?

Legal Services Attorney: Three.

Honorable William Thorne: Sure, what the heck. Counsel have you provided prior notice to Mr. Wilder of this witness?

Legal Services Attorney: No, I have not at all.

Honorable William Thorne: Without advance notice, I'm not going to allow her to testify, particularly since she was not excluded from the courtroom. If you intended to call her as a witness, you should have provided advance notice to opposing counsel. I'm not going to allow her to testify.

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Legal Services Attorney: Okay. If I could say one thing. We dealt today with people who have a theory and people who are familiar with the facts of a similar case and with people who are familiar with Blackfeet culture. But probably the one thing we would like to have the most is someone who is familiar with the children themselves and I understand that she is familiar with this case.

Honorable William Thorne: Without advance notice, I'll not allow her to testify.

State's Attorney: I'll impose an objection so that you can rule in my favor for the first time in the history of this proceeding.

Honorable William Thorne: Counsel, I can see why you're not here very often. I'm not going to allow her to testify. I think the rules require that you give advance notice to opposing counsel of any witnesses that you intend to call.

State's Attorney: Just as an aside, if there's something that wants to be stated to clarify some misconception that—I mean this is a mock proceeding and we're not trying to impugn Blackfeet or—only in the mock sense.

Honorable William Thorne: The whole purpose of that exchange was that you need to give advance notice, you can't call a last minute witness.

State's Attorney: Oh, I thought you wanted her. I would have objected like crazy in a real proceeding.

Honorable William Thorne: And I was finally going to rule in your favor.

State's Attorney: I'm already whipped.

Honorable William Thorne: I'll ask the witnesses to come up. All three of the witnesses, if you'll please come up. They're going to give you some ideas about how they prepare for court. Come all the way up in front of the bench up here. Being on the witness stand is different from anything else that happens in the courtroom. I practiced law as a trial lawyer and a litigator for a long time and felt comfortable in both federal and state courtrooms. The first time I got up as a witness, I had a hard time remembering my own name and my address.

It's scary being up there in that box, no matter how often you've been in the courtroom. And the title of this is how to survive in the courtroom. So we'll ask the witnesses to tell you a little bit of what their experiences have shown them on how to be prepared for that spot. And the lawyers and I will probably give you some ideas. Then we'll throw it open to questions. So, Doctor, do you want to go first?

Dr. Wines: I'm not really a Dr. Wines. My name is Carol Wines, and I have a Master's Degree in Social Work. I'm with the Department of Social Services, a child welfare worker. I testify in court often. With the training and experience that I've had, I've found one thing and that is they look at your appearance and how you come dressed for court. I didn't have advance notice today or I would have worn a blue suit that I have. The only place anybody ever sees me in that blue suit is in the courtroom with a very conservative white blouse, very conservative shoes, non- dangly earrings and my hair, usually, put up. You should try to look just as professional as the people you're up against. I've also found that it's important that you know your case. Do your research and know the facts of your case ahead of time. And if you've had a chance to sit down with your attorney and find out what kinds of questions they're going to ask you, that helps too. You might be able to make suggestions to the attorney about what kind of questions they might want to ask to get the information out. Do your homework and be prepared.

Don't let the attorneys rattle you, intimidate you, or get you into vague answers by firing questions at you. Feel comfortable if they ask you a question and if they demand a yes or no answer and you'd like to say no, realize that in reality you're just saying no and relying on your attorney to ask you a question later so that you can then explain the reason why you gave that answer.

Honorable William Thorne: An example of that is the bias question. Were you biased in favor of Indian placements? Yes. Looks bad but trust your lawyer that you've alerted him or her ahead of time and they can let you explain that.

Dr. Wines: And I think take your time. If you need time when you're on the witness stand, it's okay to say, can I take a moment and collect my thoughts? Can I take a moment to refresh my memory? It's also okay to say, I'm not sure I understand the question, can you repeat it? Give yourself some time to collect your thoughts so that you come across very self confident and self assured. I tell you, the judge will pick up if you're up there and you're scared and if you portray that you don't know what you're doing and that you're uncomfortable, they pick up on that and then you lose some credibility. That's been my experience.

Ms. Hopper: First of all, I'm a social worker so I deal mostly in certification of Indian foster parents. And usually, I'm not called upon to testify. I usually have a chance to prepare.

Honorable William Thorne: Like real life.

Ms. Hopper: Like real life. For instance, I would have—if this would have been real life, I would have known much more about the particular case and about everybody involved in the case. Also, I think that preparation and investigation makes a lot of difference because you actually know something and then you are credible. I guess what would be most important to me would be sufficient time for a lot of preparation.

Witness: I've been doing social work for twenty years now and I am getting to be a tribal elder. But I think you always get nervous going up there. I can remember being really nervous in the early eighties. However, I know what I know and they don't necessarily know what I know. Be sure you feel good about what you're saying.

Honorable William Thorne: Carol, do you want to tell them about the paper you give to the lawyer ahead of time?

Dr. Wines: A lot of times, I have prepared a resume and it's different from normal resumes. It talks more about the credentials I've had, my education, and specific courses I took when I was in graduate school that relate specifically to what I'm doing. I may list that I've done drug and alcohol counseling or I've attended a course in child welfare or whatever. This is listed on my resume ahead of time. This resume is presented to counsel ahead of time and often, it can eliminate going through how many cases you may have had, and how long you have worked with Indian families. It sets down on paper your qualifications as an expert. And if you're lucky enough to have a computer or something, you can just keep updating it. I've found that keeping such a resume is very effective.

Honorable William Thorne: The advantage of doing it that way is it gives your own lawyer a chance to be prepared. But, if you hand it to the other side in advance, there may be no contest. There may not even be any argument about your qualifications and you can get right to the heart of the matter.

State's Attorney: Often, when I run into the latter situation, I don't want to not ask questions regarding qualification because you can always get some zingers in on cross-examination. I try not to stipulate to the qualifications. Frequently, it's very effective. It takes some real ammo away from the other side.

Honorable William Thorne: Sometimes I've seen attorneys avoid cross-examination just because they don't want the judge to know how qualified this person is. If you get her to testify just as a caseworker and counsel stipulates to that, the judge will usually accept that. You find out all the other special things that she's done, then her credibility goes up. Therefore, it may be to your advantage not to bring it out. But that will give you some idea about a caseworker's point of view of what helps. Counsel, what would you suggest to your experts when they come in? What do you want them to do or not do for you?

Legal Services Attorney: You have to speak up. And if there's a jury, then you should address them. What we'll do is, we'll say look, could you please tell the jury what you need to talk about and then they'll look at you. Or we'll say, would you please tell the court? So then the witness should either address the jury or the court.

Honorable William Thorne: Being a lawyer who hasn't done a lot of trial work, what kind of things can they do to help you?

Legal Services Attorney: Well, they definitely need to go over testimony before they testify. They need to go over what we're going to ask and make sure that they don't get lost. Spend a couple of hours doing this. Run through it.

Honorable William Thorne: Mr. Wilder.

State's Attorney: One of the things that I really like about doing Indian work in real life is that I always get to wear the white hat and today I had to wear the black hat . I don't feel very comfortable trying to nail a tribal elder, even one that's not yet a tribal elder. The thing that I think is the most important to remember is that this is a really poignant human drama. Don't take the human element out of this. Yes, you're going to be nervous and yes, you're going to be scared. I mean I don't know, I probably looked like I was scared to death, but I was nervous during the course of this. That's just natural. But don't lose sight of the fact that this is a human drama. And the fact that you are telling the story. We often worry about the weaknesses in our case and we try to distort the drama, when in fact, the weaknesses, the sympathy that you get is perhaps the strength of your case. And never lose sight of that. Also, that this is an Indian case and that primarily your Indianness, for those of you who are Indian caseworkers, that's the basis of your strength to begin with. Because you're going to walk into that courtroom with a greater knowledge and a greater understanding. Even if you don't feel like you're an expert and this seems like a foreign land, that's your strength, so play to it.

Let me go to the other side of that. We have to remember and your lawyers need to remember, back in the old days, the early seventies, when legal service lawyers went to court in sandals and bare feet and all of that. That used to bother me and it still bothers me because your strength is your Indianness, but you're in a foreign land when you're in a state court proceeding. And it's a game where they keep score. And if you get a zinger in, then you get a point for your side and then they get a zinger in and they get a point for their side. Don't go in there giving the other side points.

So the dress, the professional demeanor and all of that is absolutely essential. That doesn't mean you have to worry about the braids or the jewelry or any of that. I mean just a good clean, neat professional appearance. Courteous to the judge. I mean even if this judge is the biggest redneck jerk in the history.

Honorable William Thorne: We practiced a little bit yesterday and one of the witnesses was a smart ass on the stand. That means that you've wasted the whole effort. You're trying to give the judge a reason to decide in your favor. You don't do that by being a smart ass. You do it be being a professional who has an opinion that's worth something.

State's Attorney: Don't leave out marking yourself as an Indian caseworker and that you're proud of it. Your pride, that's what we're asking for. I mean that's the whole purpose of the ICWA and that's why you're in there fighting because the right to be an Indian is that child's right and that's what you're fighting to protect. And you get all involved in the case when it's really right to be just as proud as you are, to say I'm an Indian and proud of it. There's really no mystery to this. It's not Perry Mason on TV and it's not a mock trial. Everyone plays out differently but it's just a story and you've got right on your side. You've got the law on your side, the strengths are with you. And don't let your attorney blow it for you.

Honorable William Thorne: A couple of things that I would add is, if you prepare your case well, you know what's going on. You should look at it with a critical eye and ask, what should I have done that hasn't been done that I can still do? Look at it a week ahead of time if you have that kind of a luxury. Say if I was going to do this again, what am I missing.? Is there something I can accomplish in the next week that really needs to be done in order to make it a better case? Sometimes, there's just not enough time, too many case loads and stuff. But if you have that luxury, then ask those kinds of questions.

Most importantly, prepare your attorney. Make sure your lawyer knows your credentials, knows the case and knows the problems in the case. You've been working with this family for months. You know what works and what their pitfalls are and what the weaknesses are. Tell your lawyers. Better yet, write it down for the lawyer. Type it out and hand it to him or her so they can bring it in the courtroom. So they know what they have to worry about as well as what the strengths are. And that way, when you get on the witness stand, you can simply trust the lawyer.

One thing I've found with witnesses is, if you could have tunnel vision as a witness, concentrate only on the lawyer. Don't worry about the audience. Don't worry about what's going on. Concentrate on the question they're asking you and answer that question. Trust that they know where they're doing. They're more likely to know where they're going if you've made sure you've properly prepared them. Then you don't have to focus on anything else. Focus just on what your lawyer is doing and answer that question.

Don't let attorneys intimidate you because often times, if they don't see a weakness in your case, then they'll try and bully you or get you to rise to their bait. Then it becomes a one on one battle between you and the attorney. At that point, you lose your credibility because to be honest, jurors and judges expect attorneys to act one way or at least they allow for expectations that attorneys can act a certain way, but they expect other people to behave better. I'm serious, they really do.

And if you get down one on one and go toe to toe with the attorney as a witness, you lose your credibility because then you're no longer neutral. You're an advocate. And an advocate testifying has a whole lot less credibility than somebody who is simply rendering a professional opinion on something.

So just because an attorney is giving you a hard time, understand that it's not a debate where you go one on one with the attorney and the one who wins scores the most points. Because if you do that, you've allowed the attorney to control what's going on. You're much better off if you come up and give your opinion as a professional. And sometimes that's hard to do. We're all used to being with friends and who give and take, back and forth, throwing insults back and forth, teasing each other. It's hard to sit there and take it but if you do, you're opinion is worth a whole lot more to the judge and to the jury than if you get down and muck around with the lawyers.

Dr. Wines: In terms of doing your homework, because I've had this happen to me in cases, if you know you're going to get asked questions, do your homework. Have your resources. Be able to quote about books, articles, or whatever. Have the books with you. Know where the information that you're basing your opinion on is coming from. If you know you're going to get asked questions, have your information together. If they're going to want academics, which a lot of lawyers are going to want, if you're coming in with a degree, have that information ready.

Honorable William Thorne: To qualify as an expert witness, realize that there are a lot of people who misunderstand what an expert witness is. It doesn't mean you're the best witness or that you're the final authority. To qualify as expert in a courtroom, all you have to do is have a level of experience or training that is helpful to the finder of fact.

That just means that as a witness, you have some experience or some training that I, the judge, don't have. That's not hard to do. I haven't been a caseworker. I can't think of any judges that have. I haven't gone in and visited the families, worked with people and with their various problems. That makes you an expert who can testify.

So don't get lost in the idea that you have to have alphabet soup after your name. Ph.D.s, M.A.s, M.S.W.s, B.A.s, B.S.' and whatever. Your experience and training or a combination thereof can qualify you as an expert to testify. That's the first level. That's the threshold. That allows you to give an opinion. Because most times in court, you cannot give an opinion. You can tell what happened or what you saw, but if you're going to give an opinion about what you think ought to happen, you need to be an expert. That's the first level and that's not hard to get over.

The second level of expertise is how much weight the fact finder is going to give you. And to do that, you lay out all the other experiences. Why is this person more credible? That's the second test, it's not the first one.

The First test is, is the expertise helpful? After that, then you're trying to convince the judge why they ought to believe you. Just because you're an expert doesn't make you believable. All it does is allow you to give your opinion. The second level is why are you believable.

State's Attorney: When I was cross examining Dr. Wines and I asked her about all her degrees, it reminded me of the joke about degrees. The first degree you get is a B.S. and we all know what that is. Then you get your M.S., that's more of the same and then you get your Ph.D. and that's piled higher and deeper.

Honorable William Thorne: Okay, we're going to throw open the questions.

Woman: Should you bring the case file with you to court?

Honorable William Thorne: Absolutely. If you're a custodian of the files, if you're the caseworker and you have the file, bring it in. Bring it with you. You may never need to refer to it but you don't want to be stuck if somebody asks you a question and you don't have the resource to find out.

State's Attorney: The best way to deal with the case file is, in your preparation with the lawyer, you should go through the case file and clip those areas that you may want to refer to. If you don't have that luxury, at least go through it yourself and clip areas which you think are important.

Honorable William Thorne: Use post-its, paper clips, or whatever.

State's Attorney: But actually, your attorney should be sitting there with a duplicate file that's marked identical to the one you have, so then you can go back and forth.

Honorable William Thorne: But sometimes you have lawyers that don't do that in preparation. So that means that you have to do it. Be familiar with what's in there. If you don't know it right off the bat but you know it's in there, tell the judge or lawyer, I don't know, but I can find it. I know it's in here.

State's Attorney: In an absolutely prepared case, you would give a marked duplicate to the judge and to the other counsel and then you'd sit there and everybody would read off the same sheet of music. It's real effective.

Honorable William Thorne: That kind of preparation really does do a lot to enhance your credibility. The more you act like a courtroom is your natural home and the more you feel comfortable in there, the more credibility you have. The lawyers who come in and everything is marked ahead of time and mentions that to the judge, there's a lawyer who knows what they're doing. If they have to stand around because they don't know what the next step is, even though they may be right, their credibility goes down a little bit. That's just the way it happens.

So as a caseworker, if you come in, you're prepared and you know something is going to be talked about, a psychological report, a home study, an incident report where you went into the home and there was a problem there, have a copy ready to give to everybody. I have seen caseworkers whose attorneys have asked, well what about this incident. The caseworker says, here's the incident and Judge, I have a copy for you too. That caseworker knows what they're doing. They actually may not, but in the courtroom, the judge certainly starts to pay attention to what they have to say. After all, you have an opinion because you think it's worthwhile. Give other people a chance to respect it too. Anybody else?

Man: What happened to the children in the case you just used, in the mock trial?

Honorable William Thorne: Ultimately after three days of testimony, the attorney for the state and the attorney for the guardian ad litem, the mother's attorney and the tribal attorney all agreed that the children should go with Grandma. The attorney for the foster parents disagreed. Originally, the case started out with the condition that only the tribal attorney and the grandmother's attorney thought that the child should go with her. In the course of the testimony, the guardian ad litem and the county attorney changed positions based on what they heard.

Man: Would you have allowed the unannounced witness to testify?

Honorable William Thorne: Probably not. Because as a judge, I would have ordered an exchange of witnesses ahead of time so that everybody knows what's going on before they walk in the courtroom. No surprises. I've found that's the fairest way to do it. To make sure that each side knows what's going on and has the chance to present their point of view. Now if it truly is an expert witness, if it's somebody who could not have been known ahead of time and they just walked up, I would have given Mr. Wilder a continuance to come back, get ready and then do it at another time. In fact, I did just that before I came here on a preliminary hearing for a felony. A witness that had not been disclosed, it was a confession actually, showed up. So, we took a week's recess in the middle of the hearing to give the defense attorney a chance to look at the reports and interview the people involved. And then we came back and continued the proceeding. I do this in order to make the hearing fair.

But ordinarily, I would have made the lawyer stick to the pre-trail order which told them that they had to exchange that information well in advance.

Man: Is you personal appearance in court important, for instance, do most people show up wearing a suit in a tribal court?

Honorable William Thorne: Actually most of the time in tribal court, I think, there is more concern with the substance. Although if you have a doctor or a policeman who comes in looking like a drunken bum, that's a problem. If you have regular people come in blue jeans and boots and a work shirt, that's not a problem.

Man: What about the testimony of the tribal elder who may not have had any real experience with the ICWA? Could an elder be challenged based on something like that?

State's Attorney: That would probably be the most fatal mistake anyone could make would be to take on a tribal elder in tribal court. No objection, no matter what he or she says.

Honorable William Thorne: You can always argue later that the testimony should not be believed or that it should not carry much weight. But it's real hard to keep out testimony in the first place with the new, relaxed rules of evidence. Years ago, it was tougher. But now the standard is just, is it helpful? When it starts to duplicates, if you have ten people who are going to say the same thing, then it may not be helpful. But if you've got one witness who's going to say something from one point of view, that's probably going to get in.

Man: What about the fact that the child may physically appear to be Indian, but is also of another racial group?

Honorable William Thorne: Give the appearance of being Black?

Man: Yes.

Honorable William Thorne: You'd consider that as a factor but with children this age, that would not be a controlling factor. When I've interviewed children in chambers, these two in particular, I make sure to tell them that I have to make the decision. I want to know what you think. I tell them, when you walk out of here, people are going to want to know what you told the judge. And I say, you tell them whatever they want to know. If you think they want you to say that you want to stay with them, tell them that. If the other people say that you want to stay with them, tell them that. You tell them whatever is going to make them happy. But remember, it's my job to make the decision. You don't have to take any responsibility for it.

I think it's important for the kids not to feel that they have to choose. In this case, the kids preferred to stay with the foster parents. They liked Grandma, but they'd not had much exposure to her. And that's normal. I think judges need to be very careful that they don't place the burden on the kids. Don't make the kids feel responsible. They ought to be listened to and they ought to know that their opinion is respected. But it's not their choice and they don't have to carry that burden and face the adults and say well why didn't you choose me. That's not fair to them.

State's Attorney: I just have a comment on those two questions. Sort of general questions asking for generic answers. I think it's important for all of us to remember that each tribal culture is different. And in one court room in one tribal court, what is considered a tribal elder or acceptable dress or what have you, may be quite different in another. Again, you must be able to adapt to whatever tribal court you happen to be in.

Honorable William Thorne: That's right. Any kind of generalization is dangerous. If you can get specific information, you're always much better off. Understand too, that you don't need to know why a lawyer asks a question. You're much better off if you're not trying to guess because then you're two steps away and they'll lead you down a different path. The best time I ever had as a trial lawyer was with witnesses who thought they knew where I was going. And I let them think whatever they wanted and let them go someplace else. You're much better off not trying to play strategy games with the lawyer. Answer the questions straight out and let the other lawyer argue it back and forth.

So if you prepared it with your lawyer, and any good caseworker has, then the judge will know that. The judge has been a lawyer. He or she knows how it's done. But if you start evading on the witness stand and start acting like I did something wrong, then you've given the lawyer the advantage. You're much better off just answering whatever question you're asked as honestly as you can and don't wonder why you're being asked. It may just be an inane question.

People sometimes wonder, well why are they asking me that? Your job as a witness is not to wonder, don't worry about it. You don't need to know why they're asking a question. All you need to do is give the best answer you can. Trust that you've prepared your lawyer so that they can deal with it. It's not your job to deal with it.

State's Attorney: There's some sense that questions are designed to trick you, or whatever. I always tell witnesses, keep one fundamental aspect in mind, that truth is what you're after. Always tell the truth. If your case is such that you've got a major lie involved in it that you have to tiptoe around, you shouldn't be involved in that proceeding anyway. Every case has its strengths and every case has its weaknesses. You need to meet your weaknesses head on and figure out how to deal with them with your lawyer. But the zinger will always be if you try to hide something or tell an untruth because you think it might be harmful to your case. It will come back to haunt you ten times.

Honorable William Thorne: And it's not worth spending time in jail for perjury. It's just not. But on top of that, if you're worried about the question, you give the appearance then to the judge that you're not fully answering the question. Your mind is doing two things at once. And the judge will often times interpret that as either evasion or that you're just not sure. In which case, your testimony suffers because you're worried about why is he asking me that, does he want this? Well, I don't want to give him that so maybe I'll say this. And even if that thought process just takes a second or two, it looks to the judge like you're not sure or you're evading something. And that damages your credibility.

My suggestion would be to completely ignore why you think the attorney is asking the question. Just answer it straight out. And let the other lawyer worry about explaining it or giving you a chance to explain. Don't play chess with the lawyers. That's their job. Your job is to be the best witness that you can and give the fact finders as much information as you can so they can make a decision.

State's Attorney: I don't know if a judge would get too exercised over the fact that—counsel's got every right to ask through discovery, through taking your deposition or making a motion to compel the disclosure. And if they haven't asked for it, I don't think you've got a problem. If you're up there with a file, if you're going to introduce a document or something, you have the responsibility to show the other side so they can review it. But I wouldn't worry about that. Walk up there with a file that big. If they haven't asked for it, tough luck.

Honorable William Thorne: Sure, I'd take whatever you need. But once you start to look like you're an adversary of one of the lawyers, then the credibility suffers. Your job is to come in and be the eyes and ears of the court basically. You've been in the home. You've dealt with the family. You know what's going on. Your job isn't to be an advocate, your job is to be the eyes and ears and tell me what you know and what you found out. A one or two page check list that you do and hand to the lawyer before you go in is wonderful. The lawyer can go down and make sure everything's covered. Because you know the case a lot better than the lawyer. The lawyer may have a dozen cases that day. At most, you have one or two that day. And you've worked with the people. They're not just names on paper. You know the faces of the people involved. The more help you can give your lawyer, the better off you are at sitting back and relaxing and letting the lawyer guide you on where you need to go. Any other questions.

Woman: What if the tribal elder, Ms. Scott, was politically supported by the Indian family in question, would you want to consider this prior to selecting her as a witness?

Honorable William Thorne: Absolutely. If it turned out that Ms. Scott, besides being an elder, was a moving political force and this was one of her big supporting families on the elections and Mr. Wilder found out about this, then that would leave her wide open on cross examination to charges that there's simply a political favor being paid through her testimony. I mean you have to take all those kinds of things into consideration when you choose who to have testify and who not. There are people who are more articulate than others. It doesn't mean that they know more but that in a certain situation or circumstance, they may make a better witness.

And for those of you who think it's easy, you have to know that the people who are involved prepare. Yesterday morning, again in the practice run last night and than in another practice run this morning at seven thirty, they practiced. Because it takes practice to do it well. And that only comes be getting in and doing it. So do whatever you can do to be prepared. Go to the courtroom early and practice.

Dr. Wines: I mean it felt like work. I mean I had to get up, I had to go through the case, I had to learn the facts and then sit down with my attorney. I had to tell him about me. I had to tell him what to ask. It was like getting up and going to work.

Honorable William Thorne: Generally, you're better off just focusing on the questions and letting your lawyer do their job. Because if you get in a battle with the lawyer, it's downhill even if you win. Even if you win, it's downhill.

State's Attorney: I really love the witness that every time you ask a question, they look at their lawyer. I mean, you just know that you can hammer away and pretty soon, they're just going to get confused.

Honorable William Thorne: That also encourages the lawyer because they think, now I've got him on the run. Once you start reacting to the lawyer as opposed to the question, you've given the reins of control to the lawyer and they know they're in charge. And it's downhill for you as a witness. It's downhill for your credibility. I can't tell you enough, focus on the question and your information and ignore everything else. If you've prepared your lawyer, they can do it. Once you start to worry about a lawyer's tactics or dealing with a lawyer's tactics, you make yourself less effective.

When you walk out, chew out your lawyer if they didn't do a good job so that the next time they walk in with you, they know they better shape up. But don't worry about it while you're in there because you'll make yourself less effective. And the judge expects or allows a certain amount of nastiness from lawyers but won't put up with it from other people because they expect you to be a professional. They expect the lawyers to be bad boys or bad girls.

And some of the best lawyers are not. But if you are, the judge makes allowances. They don't have to believe the lawyer. They have to believe you as a witness. Any other questions?

Woman: I'm a social worker here in L.A. County and some of the problems that we run into is our counsel, our county counsel is sometimes changed in the middle of a case and then new counsel comes in and doesn't know anything about child welfare.

Honorable William Thorne: What you have to do is, you have to sit down and educate them. And that may mean you have a sheet of what the ICWA is so that you can hand it out to new lawyers and educate them. It means that you have a sheet of facts that you can give them about the ICWA.

Woman: But often, we don't even know that counsel has been changed.

Honorable William Thorne: So that means that you may want to prepare that for every case.

Woman: We're not always there for every case that goes to court.

Honorable William Thorne: In that case, you just do what you can do. But if you have a file with a running list that, someone can open up and see who's involved in a case and a couple of sentences about each participant, what they are and what they've done or what they haven't done, that's the best you can do. There are system problems that prevent things from going well. If you find out that the case has been transferred to another lawyer, if you think it's important and you can't be there, you may want to call the lawyer up. You may run the risk of the lawyer not returning your call.

In which case, you may want to simply find out where they are and nab them on the way out of the courtroom and say you've got a trial coming up tomorrow with this case, here, read these two pages. Or camp out on their doorstep or whatever. There are good lawyers and bad lawyers just like there are good caseworkers and bad ones. Either one, sometimes even the good ones, are busy. So what you can give them, they'll appreciate and will be of help to them. Some, it just won't make a difference. And there's nothing you can do about that.

State's Attorney: We've all seen that no matter what question the lawyer asks, they give the answer that they think the court ought to hear. And you may have to do it too. The worst nightmare, of course, is if you've got an inexperienced caseworker and an inexperienced lawyer, that's a terrible situation. Straighten their questions out for them because you know what the truth is and where you want the case to go. You've got an opinion, that's why you're there. Make sure you get it out.

Honorable William Thorne: One thing you can do but don't do it very often. You say, judge, can I talk with the attorney for just a minute? Then you can tell the lawyer what they need to do. Then go back down there and do it. You don't want to do it very often but if there's something glaring that's being missed or mishandled, say judge, can I talk to counsel for just a minute.

Straighten it out and go back. Don't do it very often, but when all else fails, yank the cord and do something now. But don't rely on that parachute to get you down every time. Because if that becomes a standard practice, the judge is going to say no, you're job is to come prepared. Any other questions? Well, I want to express my appreciation to the lawyers and the witnesses. They put in a lot of work to get this prepared and I think they did a good job. Thank you.

ADDENDUM WORKSHOP

Fetal Alcohol Syndrome: Identification, Treatment, and Prevention for Mother and Child

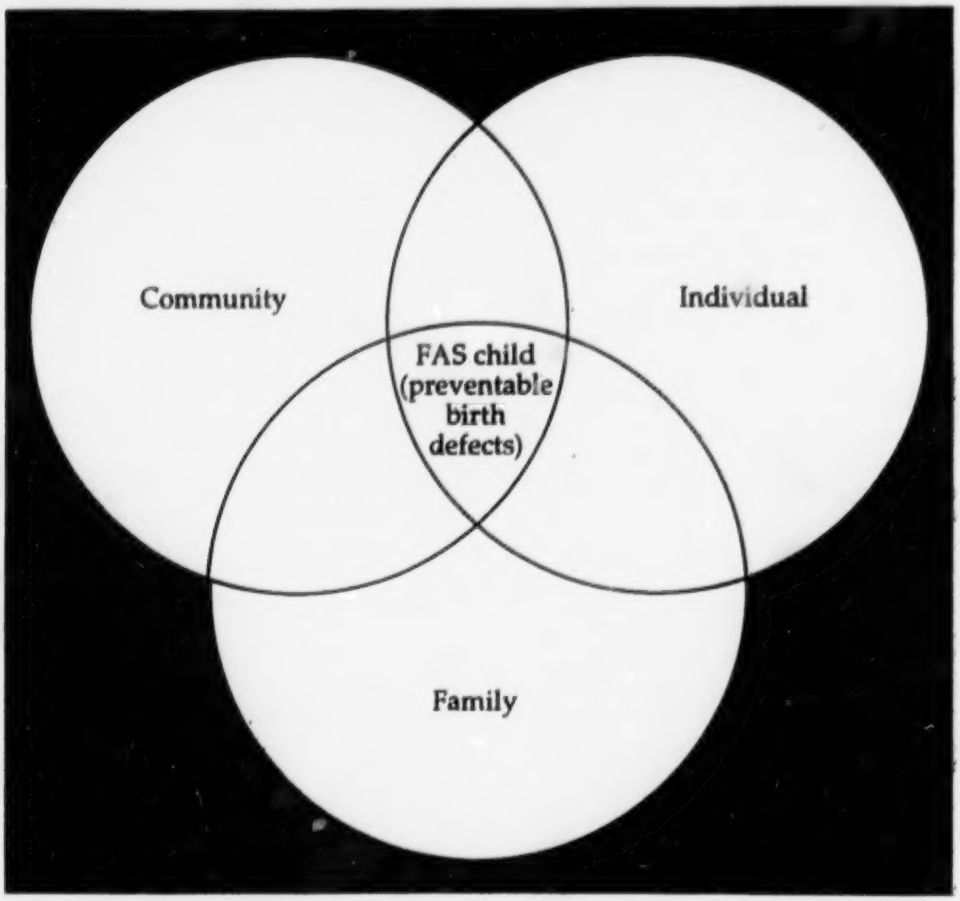
(Thursday, August 23, 1990)

[This section of the previously presented 1990 ICWA Workshop 3, presented by Kathleen Masis was not included in "The Indian Child Welfare Act: Indian Homes for Indian Children," because of difficulties in obtaining manuscript approval. Therefore, it has been included in this publication.]

Kathleen Masis: Thank you. I want to thank you for that talk. I do not know if people know that this is one of the few people in the country who can give a talk like that. Well, she wants to be an advocate for the children, and I am going to talk about being advocates for the mothers. I am a family doctor and a clinician and, for the last two-and-a-half- years, the director of a fetal alcohol syndrome (FAS) prevention program on the Navaho Reservation that was grass roots. I am going to talk about what we found out. We had a grant from the Indian Health Service (IHS) for a health promotion and disease demonstration project among the Navajo and Hopi. What we demonstrated generated a tremendous amount of interest in the community. We have both the Navajo and the Hopi in my area of the Navajo Reservation. We found that the reason the community was so interested is because of the children; you cannot pass on a culture if the children are brain-damaged. We are talking about Indian children and families here, and that is not my community.

This is how we look at prevention, that prevention involves the individual, the family, and the community, all three. FAS is prevented with the individual, the pregnant mother who is addicted to alcohol or other drugs, just working with her is not going to be productive. She has a family; she is coming from a family. And all of our clients who are mothers are themselves the children of alcoholics. There are a few whose parents we do not know. But of all of the others, whose parents we do know, they are the children of alcoholics. And the community, they are part of the community. And the Indian Health Service, and teachers, and the social workers, there are a lot of the community people that we would welcome for help. The health promotion needs to be planned and not just, "we are going to go out and give some talks." During the first year we trained Navajo community and health personnel, we trained IHS providers, we sent pregnant women for treatment, we went out to the chapters. We now have a screening tool for pregnant women.

SLIDE 1: COMMUNITY MODEL

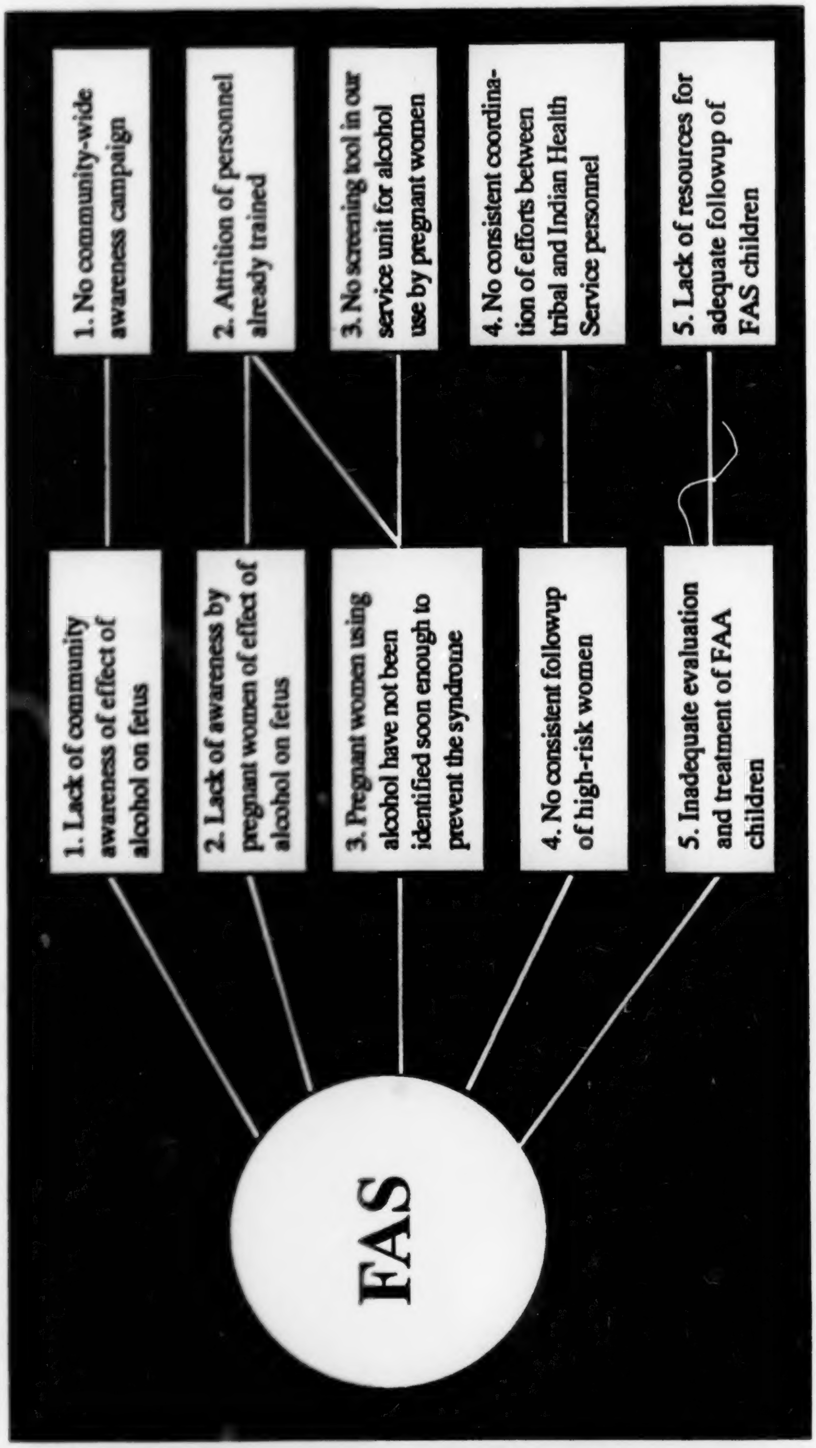


In our clinic, we ask women, "Are you drinking?" We have a protocol now for how to intervene with pregnant women who are using alcohol We admit her to the hospital. And then we have to do training with the obstetrician to get them to do that.

We have developmental assessment and treatment, and the FAS mothers and caretakers will participate. We planned to, but we do not have, the resources. There is a tremendous need. These children have a lot of needs and we are not able to be there with our staff of three. We just learned more about that.

Phil May's studies show that there are small groups of women who are having FAS babies—that the amount of resources that you need is not overwhelming—6 out of 1,000, and in the end it did add up to be the right number in our little survey. And we have 20,000 people in our service unit.

SLIDE 2: FETAL ALCOHOL SYNDROME PLANNING MODEL



FAS

1. Lack of community awareness of effect of alcohol on fetus

2. Lack of awareness by pregnant women of effect of alcohol on fetus

3. Pregnant women using alcohol have not been identified soon enough to prevent the syndrome

4. No consistent followup of high-risk women

5. Inadequate evaluation and treatment of FAA children

1. No community-wide awareness campaign

2. Attrition of personnel already trained

3. No screening tool in our service unit for alcohol use by pregnant women

4. No consistent coordination of efforts between tribal and Indian Health Service personnel

5. Lack of resources for adequate followup of FAS children

Source: Masis, K.B. and May, P.A. *A Comprehensive Local Program for the Prevention of Fetal Alcohol Syndrome*, Sept/Oct 1991.

Robin LaDue: But, I contend, what percentage were in their child-bearing years?

Kathleen Masis: But it came out to be about thirty-five women that we are talking about. They have more than one FAS child, which is why prevention is so important. Not just preventing the child that is being carried in the pregnancy, but after the child is born, if she has an FAS child, she is at the highest risk of anybody of having another one. There really needs to be some intervention done, which is another reason the children need to be identified, because of what you were talking about. In your case load, you will have children who are affected. If the mother is still alive, she is at-risk of having more children. So that is one real important reason for making the diagnosis and intervention.

SLIDE 3:

AGE OF FAS PREVENTION CLIENTS: 27.2 YEARS

It is not teenage mothers who are having FAS children in the continental U.S. However, in Alaska, there are teenage FAS mothers. In the continental U.S., for whatever reasons, they are older, with an average age of about thirty years. They have a couple of normal-looking children, and then maybe an FAE child, and then they have a child with severe FAS.

SLIDE 4:

CUSTODY STATUS: MOTHER HAS LOST CUSTODY 33.3%

A lot of our clients were younger; they do have custody of their children. We do case management with the women, not only when they are pregnancy, but also when the child care groups, protective services, refer them, when they are either losing custody or endangering the custody of the children.

SLIDE 5:

ALCOHOL STATUS OF PREGNANT WOMEN REFERRED:
29 REFERRALS: 21 BECAME CLIENTS OF PROGRAM
BEFORE THIRD TRIMESTER
19 (85.7%) ABSTINENT BY THIRD TRIMESTER

This is the good news. Out of twenty-one pregnant women that were enrolled in the program before the third trimester of pregnancy, nineteen of them stopped drinking, and none of those nineteen had a FAS child. And I believe that those who studied this in Boston, they published that their mothers had stopped drinking before the third trimester, the last two months of pregnancy, none of them had an FAS child. And this is really important, because people still have the idea that, especially those abusing alcohol who come in later for pregnancy test, you know, "What good is it then, the damage is already done?" Well, there is damage already done, but the third trimester is when the baby grows the most, and the brain is the most susceptible. So if she stops drinking before the third trimester, the brain is spared then, so there is growth. So there is hope.

SLIDE 6:

ONE FAS CHILD BORN TO PREGNANT WOMEN
REFERRED FIRST 18 MONTHS OF PROGRAM

Of the two who did not stop drinking, we had one definite FAS child. So here we have a little, tiny sample of 50 percent, and then I cannot tell you if the other child is completely normal. They probably should be tested when they get older for FAS or FAE. This looks discouraging. But we still have an FAS child and the woman who has an FAS child. And this baby is five pounds, full-blown FAS. But there is a miracle there that John Aase was her visiting Tuba City from New Mexico. He was there the day after this baby was born. He examined the baby and went in, and—this is not a long intervention—he went in and said, "Your child has FAS." He explained to her about the small head, tiny eyes, and just showed her, very compassionately, what he found and what is typical of FAS. And here we have Mother Nature, too. This woman was addicted to alcohol and unable to attend to the pregnancy. But when the baby was born, Nature was stronger than the addiction—Mother Nature—and she loved this baby; she feel in love with the baby. And she cried. And the psychiatrist went to see a very upset patient. She agreed to go to a psychiatric hospital and then was transferred to an alcohol treatment center. She voluntarily gave up custody of this child. She was treated, she came back, and she was in after-care for a few months. Then we lost her. We did not see her anymore, and then we found out through the grapevine that she was pregnant again. We started wondering, Does this program work? Were we really doing any good here? And Mae went to see her, and again she said, "No, I don't want to talk to you." This past year, she delivered a seven-pound normal baby. She did not drink. She wanted the baby to be healthy. And she still has custody of that child. And she had her tubes tied, voluntarily. And I do not know how long she is going to stay sober, really. She may not; she may stay in sobriety; she may lose custody. But she had a few months of normal life, and I do not think that in her whole life she had—and I know this woman—if she had any kind of normal life.

This what we do with the individuals, with the mothers. We made a screening, identifying the high-risk mothers, doing an assessment on them. We think that, what we advocate is that each prenatal setting has a specialist--whether that is a nurse or a doctor or a worker--but that somebody there is interested and knows about FAS and FAE. "Alcoholic intervention work," it is called.

SLIDE 7:

HOW DO YOU TREAT PREGNANT WOMEN WHO DRINK HEAVILY?

-ASSESS DRINKING PATTERNS.
-EVALUATE PSYCHOPATHOLOGY AND EGO STRENGTHS.
-EXPLAIN EFFECTS OF ALCOHOL ON THE FETUS.
-RECOGNIZE PREGNANCY AS "NORMAL CRISIS" WITH CHANGING PHYSIOLOGY, BODY IMAGE, AND SOCIAL LIFE.
-PRAISE ABSTINENCE FROM ALCOHOL.
-EMPHASIZE THE POSITIVE MESSAGE THAT ABSTINENCE WILL IMPROVE CHANCES OF HAVING A HEALTHY BABY.
-AVOID GUILT-PROVOKING CRITICISM THAT COULD RAISE ANXIETY LEVELS AND CAUSE INCREASED ALCOHOL CONSUMPTION.

--Withdraw alcohol over several days if tolerance has developed.
--Avoid disulfiram (Antabuse) and other potential teratogens.
--Refer for specialized alcohol treatment If abstinence is not achieved in two weeks.
--Assist with social and emotional problems.
-- Plan aftercare before delivery.

Source: Rosset, H.L., Weiner, L., Morse, B.A. *Identification and Prevention of Fetal Alcohol Syndrome*. Brookline, MA: Boston University School of Medicine.

Slide 8: Ten Question Drinking History

Is There A Brief Format For Identifying The Heavy Drinker?

This 10-Question Drinking History provides a systematic, objective format. It assumes some alcohol consumption and is non-judgmental about amounts. This encourages patients to report their drinking accurately. Each professional should adapt the wording to fit his or her style.

TEN QUESTIONS

Beer:	How many times per week?
	How many cans each time?
	Ever drink more?
Wine:	How many times per week?
	How many glasses each time?
	Ever drink more?
Liquor:	How many times per week?
	How many drinks each time?
	Ever drink more?
	Has your drinking changed during the past year?

Source: Rosett, H.L., Weiner, L., Morse, B.A. *Identification and Prevention of Fetal Alcohol Syndrome*. Brookline, MA: Boston University School of Medicine.

This is a screening questionnaire that we use. This is from Boston. "How many times a week do you drink beer?" "How many cans, each time?" "Did you ever drink more?" This is published in the Boston University FAS Education Project. If you ask that of a pregnant woman, "Do you drink?" she says the right answer, and then everybody is happy. The doctor says, "Okay, we can go on with this." That is not the way you ask it. You have to ask, "How much do you drink?"

SLIDE 9:

ACCENTUATE THE POSITIVE -AVOID THE NEGATIVE

POSITIVE	NEGATIVE
+ "IF YOU STOP DRINKING, YOU HAVE A BETTER CHANCE OF HAVING A HEALTHY BABY."	-"YOUR DRINKING HAS ALREADY DAMAGED YOUR BABY."
+ "YOUR CONCERN FOR YOUR BABY BABY WILL HELP YOU BE A GOOD MOTHER."	- "IF YOU REALLY LOVED YOUR BABY, YOU WOULD NOT DRINK SO MUCH."
+ "YOU WILL FEEL BETTER WHEN YOU ARE SOBER AND SO WILL YOUR CHILD."	-"CONTINUED DRINKING WILL RUIN YOUR HEALTH AND PREVENT YOUR CHILD FROM DEVELOPING NORMALLY."

Source: Rosett, H.L., Weiner, L., Morse, B.A. *Identification and Prevention of Fetal Alcohol Syndrome*. Brookline, MA: Boston University School of Medicine.

This is what we use, and these are true. We are not lying here—if you stop now you have a better chance of having a healthy baby, and your concern for your baby will help you be a good mother. We talk about those kinds of things.

The prenatal setting is included here. It may be the only time in their lives women are available for a change in their lifestyles.

SLIDE 10:

INDIVIDUAL INTERVENTIONS

- PRENATAL SCREENING
- IDENTIFICATION OF HIGH-RISK MOTHERS
- ASSESSMENT
- FAS COUNSELING
- ALCOHOLISM INTERVENTION
- SUPPORT
- FOLLOW-UP

This is a March of Dimes slide (*to protect the identity of the children Slide 11 is not included*). These children in this picture have the same mother. She died six months after this picture was taken. And this child was normal; the mother was probably drinking, but there is something protective about being younger, and we do not know exactly what it is. And then this child has FAE. Now that you have seen the pictures, you can see the eye opening is a little bit small, and the flat philtrum. This child is severe FAS, and so is she. You can see that now. These three look alike, which is the FAS. She looks a little bit like her sister, and that is the family resemblance. This slide demonstrates that women who have had one FAS or FAE child are at high-risk for another. This points out the importance of diagnosis of fetal alcohol-affected children by the medical community. If we do not tell these mothers how their drinking has affected their children, we are not giving them the benefit of information that could be crucial in their deciding to attempt abstinence.

We do family genograms as a way of assessing family strengths and problems we have found a cluster of FAS cases among an extended family. This may be an important source for case-finding.

SLIDE 12:

FAMILY INTERVENTIONS

- GENOGRAM
- ASSESSMENT
- REFERRAL FOR ALCOHOLISM TREATMENT, PARENTING CLASSES, VOCATIONAL REHAB.

The family. So, talk about the family, both father and the baby and also, then, sometimes, the foster placement. Sometimes the grandparents will get the children. It is difficult to deal with these kids. Having a diagnosis can take away some of their guilt about "I am not doing a good job. This kid is FAS." It works when they know more about it. I think it is easier for them to deal with it. And we refer to the fathers who have finished their alcohol treatment. It is so often that the mother goes out for treatment, and she is addicted to this guy who is abusive to her and is also an alcoholic. If there is no intervention with him—she has a poorer chance for sobriety.

SLIDE 13:

COMMUNITY INTERVENTIONS

- COMMODITY DAYS
- HEALTH FAIRS
- SCHOOLS
- CHAPTER HOUSES
- NAVAJO LANGUAGE RADIO ANNOUNCEMENTS
- POSTERS

Look to the community. If there is a community norm, it is that you do not drink during pregnancy. But if there is one norm that has changed, it is that children now get immunizations. And if you do not take the kid in, your mother or somebody else would say, "Well, what about the shots? You now he is supposed to get shots." So there is significant pressure on mothers to get their children into health care. Along the same lines, we are looking for the norm that expectant mothers do not drink. So that when you are at a place where there is drinking, people do not expect you to drink. They are not going to hand you a drink. You expect them to know that they are going to be helpful.

In summary, what we think was necessary is prenatal screening, assessment, and intake into a FAS program of some kind. Where I am coming from, the younger women, though, are using other drugs. There are going to be fewer and fewer women that are just using alcohol.

So FAS (they called it FADE in Arizona: Fetal Alcohol and Drug Effects) requires a case management approach. We work in close cooperation with the child welfare services. Those are the ingredients which we have found to be successful.

SLIDE 14:

WHAT WORKS

1. PRENATAL SCREENING
2. ASSESSMENT AND INTAKE INTO FAS PROGRAM
3. CASE MANAGEMENT
4. CLOSE COOPERATION WITH CHILD PROTECTIVE SERVICES
5. POSITIVE NON-JUDGMENTAL APPROACH
6. FAMILY INVOLVEMENT

I think this is the reason that FAS prevention works, since alcoholism is a disease of denial. Either the diagnosis of FAS or the possible risk of it confronts denial, and that is where the appropriate response is.

SLIDE 15:

"Alcoholism is a disease of denial. Diagnosis of FAS confronts denial. When denial is broken recovery is possible."

Source: Dr. Kathleen Masis, FAS Program, Tuba City Indian Medical Center

The following is a Navajo pregnant woman's prayer:

SLIDE 16:

HERE I WALK THE ROAD OF BEAUTY WITH MY LITTLE ONE AS WE WEAR BEAUTIFUL, BEADED MOCCASINS. LET THE SUN RAYS BE ON US, AMONG THE CARPETED COLORS OF FLOWERS. MY CHILD AND I WILL BE RECOGNIZED BY OUR LITTLE TINY FRIENDS—ANIMALS, BIRDS, AND BUTTERFLIES. MY CHILD AND I WILL TOUCH THE CLEAR WATER OF

COOLNESS IN THE STREAM AS WE LIVE. HA HO YA TAHEY. MY CHILD ASKED ME, 'WHO AM I?' I SAID, 'YOU ARE MY CHILD WHO IS LIFE LIKE THAT SUN AND THAT RAINBOW.' THEN MY CHILD RAN, JUMPED, YELLED, LAUGHED, AND CHASED HIS SHADOW. I SAID TO OUR CREATOR, OUR MAKER, 'LET US LIVE IN PURE SPIRIT AND IN HAPPINESS.'"

Source: Fetal Alcohol Syndrome Workbook, prepared by Behavioral Health Department, Division of Health Improvement Services, The Navajo Tribe, June 1982.

THE INDIAN CHILD WELFARE ACT:
An Annotated Bibliography

American Indian Law Center Inc. *Indian Child Welfare Act Case Synopses.* Albuquerque, NM: American Indian Law Center, Inc., 1987.

This case synopses provides twenty-one federal court cases, sixty-six state court cases which are arranged alphabetically by state, and two tribal court cases involving the adoption of American Indian children as well as the placement of Indian children in foster homes. An excellent tool which demonstrates various court interpretations and enforcements of the Act's provisions.

Barsh, Russell Lawrence. "The Indian Child Welfare Act of 1978: A Critical Analysis." *Hastings Law Journal* 31 (July 1980): 1287-1336.

Barsh states in this critical analysis that the Act falls far short of achieving the goals set by Congress. He states that while the provisions of the Act are well intentioned, their effectiveness is limited by inconsistencies and ambiguities in the drafting of the Act. This article summarizes and evaluates what the author feels to be the most serious shortcomings of the ICWA. Barsh states "that in a sense the Indian Child Welfare Act is a time bomb."

Blanchard, Evelyn Lance and Russel Lawrence Barsh. "What is Best for Tribal Children? A Response to Fischler." *Social Work*, 25: 5 (September 1980): 350-57.

This article is an emotional rebuttal to Ronald S. Fischler's article "Protecting American Indian Children" found in pages 341-349 of this volume of Social Work. The authors attack Fischler's article from both a social service perspective and a legal perspective. While the arguments presented are logical and well stated, the emotionalism which runs throughout the article detracts from the facts. To evaluate the correctness of Blanchard and Barsh's arguments against Fischler, it is necessary to read both articles thoroughly to evaluate the arguments in light of court decisions since authorship of the articles in 1980.

Broadbent, Suzanne. "Legislation: Cooperation as the Key to Effectuation of the Indian Child Welfare Act." *American Indian Law Review* 8 (November 1980): 387-99.

In this article the author the highlights difficulties being experienced by Indian tribes in meeting the goals of the ICWA due to limited resources, primarily in the form of foster homes and institutions. Broadbent provides an appraisal of attempts to allocate the limited resources between tribal and state governments. The author discusses the fundamental state/tribal relationship including tribal sovereignty in the context of the ICWA.

Bureau of Indian Affairs. "Tribal Resumption of Jurisdiction Over Child Custody Proceedings," *Federal Register* 44:148 (31 July 1979): 45092-108.

Through this regulation the BIA added a new section to its requirement to establish procedures by which Indian tribes may reassume jurisdiction over the custody proceedings of Indian children as authorized by the ICWA. This regulation is especially applicable to Public Law 280 states and includes special Federal laws applicable only to tribes located in Oklahoma.

Buthod, Therese. "An Analysis of Cases Decided pursuant to The Indian Child Welfare Act of 1978." *American Indian Law Review* 10 (1982): 311-31.

In this article Buthod discusses the problems of Indian child placement which led to the passage of the ICWA, the ICWA itself, and presents an analysis of twenty cases decided since the passage of the Act. It is the authors' conclusion that there continues to be problems with large numbers of Indian children being placed in foster and adoptive homes of non-Indians.

Butt, Jeffrey Drew. "The Indian Child Welfare Case: Does it Cover Custody Disputes Among Extended Family Members?" *Alaska Law Review* 1 (Summer 1984): 157-70.

The case of *A.B.M. v. M.H.* involved an adoption dispute between the child's biological mother and members of the child's extended family. Since family members were the only parties to the proceedings, the prospective adoptive parents maintained that the proceedings were not within the limits of the ICWA. The Supreme Court of Alaska rejected the argument on the grounds that the Act did not expressly or implicitly except adoption proceedings which only included family members of the extended family from the coverage.

Carver, Kathryn A. "The 1985 Minnesota Indian Family Preservation Act Claiming a Cultural Identity." *Law and Inequality* 4 (July 1986): 327-54.

In this article the author addresses the passage of the Minnesota Indian Family Preservation Act (MIFPA) so that the state might better fulfill the intent of the ICWA. The MIFPA specifically addresses the serious problem of the removal of Indian children from their cultural heritage due to foster child placement in non-Indian homes. The author, while recognizing the important groundwork laid by the ICWA, argues that the Act failed to sufficiently cover voluntary foster care, pre-adoptive, and adoptive Indian child placement. Carver argues that the MIFPA is a substantial step toward addressing those shortcomings.

Davies, Bruce. "Implementing the Indian Child Welfare Act." *Clearinghouse Review* 16: (July 1982) 179-96.

Davies outlines the events which led to the passage of the ICWA, a summary of the major provisions and policies of the ICWA, and an assessment of state implementation of the ICWA after two years. The author also outlines the Adoptive Assistance and Child Welfare Act of 1980 and states that it reflects and reaffirms the policy objectives of the ICWA. Davies concludes with a useful section dealing with roadblocks to tribal implementation of the ICWA.

Deloria, Vine, Jr. and Clifford M. Lytle. *American Indians, American Justice.* Austin: University of Texas Press, 1983.

This publication was written to focus on the judicial branch of government courts; federal, state, and tribal. Indian child welfare receives only a brief treatment but raises an important point: Ten years after enactment of the ICWA, no study had been conducted to measure the effectiveness of the Act. Since the publication of this book, an in-depth study has been attempted.

Dorsay, Craig J. *The Indian Child Welfare Act and Laws Affecting Indian Juveniles.* Boulder, CO: Native American Rights Fund, 1984.

This handbook was prepared for the Indian Law Support Center of the Native American Rights Fund under a grant from the Legal Services Corporation. An eight chapter reference work which clarifies the general applicability of the ICWA; the policy and legislative history of the ICWA; an in-depth analysis of the ICWA; information regarding trial and post-trial matters related to the ICWA; a reference section providing ICWA forms, Law Review articles, a listing of federally recognized tribes, and a listing of Indian tribes that have reassumed federal jurisdiction.

Fanshel, David. *Far From the Reservation: The Transracial Adoption of American Indian Children*. Metuchen, NJ: Scarecrow Press, Inc., 1972.

This book is the report on a research project undertaken by the author exploring the nature of the adoption of Indian children by non-Indian families arranged through the Indian Adoption Project, the motives of the parents in adopting an Indian child, and the development and adjustment of the Indian child in their new family. Dr. Fanshel reports having found that the children "fared well physically, intellectually, and emotionally." A conclusion that is not shared by other studies and authors referenced in this bibliography.

Fischler, Ronald S. "Protecting American Indian Children." *Social Work* 2S: 5 (September 1980): 341-49.

In this article the author states that the passage of the ICWA is the result of four years of congressional lobbying. Fischler argues that the Act is a major victory for the cause of American Indian sovereignty although it subordinates children's rights to the rights of parents and tribes. In Fischler's conclusion he postulates that by maintaining greater sovereignty for American Indian adults, American Indian children have been placed in jeopardy and that Indian children's placements will be insecure and liable to separation at any time.

Getches,David M. and Charles F. Wilkinson. *Cases and Materials on Federal Indian Law, 2nd ed.* American Casebook Series. St. Paul: West Publishing Company, 1986.

This publication provides the history of Indian child placement which led to the enactment of the Act. Selected provisions of the Act are explained in-depth along with relevant court cases. Accompanying court decisions are also presented and analyzed in a manner which provides for ease of understanding.

Goldberg-Ambrose, Carole. "Public Law 280—From Termination to Self-Determination." In *American Indian Policy and Cultural Values: Conflict and Accommodation*, ed. Jennie Joe, 35-46. Los Angeles: American Indian Studies Center, UCLA, 1986.

Professor Goldberg-Ambrose reviews and updates her 1976 article addressing the transfer of federal civil and criminal jurisdiction over to Indian Country in some states, while permitting other states to receive such jurisdiction only under certain circumstances. Of particular significance to the ICWA, Goldberg-Ambrose evaluates the enforcement of Public Law 95-608 as strengthening tribal autonomy, while stripping some but not all of state authority over tribes involved in Indian child placement.

Guerrero, Manuel P. "A Response to the Threat to Indian Children Caused by Foster and Adoptive Placements of Indian Children." *American Indian Law Review* 7 (1979): 51-77.

This article argues the proposition that the Indian way of life is a unique expression of an identifiable but highly complex culture apart from the non-Indian world. Guerrero offers a critical analysis of the ICWA as a legislative means to obviate the unjustified placement of Indian children outside of their natural homes and to prevent the breakup of Indian families.

Hamilton, James T. "Legisprudential Considerations in Unraveling the Safety Net: Food Stamps, Foster Care and The Indian Child Welfare Act." *Law and Inequality* 4 (October 1986): 667-65.

This article examines the effect of a 1982 amendment to the USDA Food Stamp Regulations which included foster care maintenance payments as earned income in estimating food stamp eligibility. While the majority of this article addresses the history and development of the AFDC safety net, the author addresses concern regarding the ramifications of this legislation on Indian children placed in foster homes under the ICWA. Hamilton argues that the Secretary of Agriculture ignored Congressional authority and violated the intent of Congressional support of the ICWA when adopting this amendment.

Harrington, Deborah L., Candace Schau, and Nancy M. Tuthill. *Indian Child Welfare Impact and Improvement under P.L. 95-608 and P.L. 96-272. Final Report.* Albuquerque, NM: American Indian Law Center, Incorporated and CAS Associates, 1985.

This report (HHS 90-CJ-0065) provides a qualitative and quantitative analysis of the implementation of the ICWA in Public Law 280 and non-Public Law 280 states as well as in eligible Indian tribes. While this report contains a wealth of information it must be used with caution. As the authors of the report indicate, many tribes and several states failed to return survey instruments. A significant number of surveys returned were incomplete making statistical analysis imprecise. One may arrive at general conclusions based on the results of this study, however caution must be used. The qualitative and quantitative survey instruments provided in the appendix are instructive and may prove useful for future surveys of this nature.

Indian Child Welfare. "A State of the Field Study." Denver: *Denver Research Institute*, University of Denver, 1976.

This comprehensive study is the definitive study of the status of Indian child welfare prior to passage of the ICWA in 1978. Although non-reflective of the current laws and statutes, this study will be useful in comparing statistics for Indian children adoption and placement in non-Indian foster homes in the pre-ICWA and post-ICWA eras.

Johnson, Troy R., ed. *The Indian Child Welfare Act: Indian Homes For Indian Children: Conference Proceedings,* Los Angeles: American Indian Studies Center, UCLA, 1991.

Proceedings of the first national Indian Child Welfare Conference held at the University of California, Los Angeles, August 22-24, 1990. Provides an introduction to the Indian Child Welfare Act (ICWA), as well as edited workshop transcripts including ICWA and Public Law 280, Tribal Court Jurisdiction, ICWA Procedures and Jurisdiction, Cultural Sensitivity Workshop for Social Services and Legal Professionals, Tribal Court Practice, ICWA Legal Cases and Analysis, Fetal Alcohol Syndrome: Identification, Placement, and Permanency Planning, and Long-term Effects of Out-of-Home Placement of Indian Children.

Johnston, Patrick. *Native Children and the Child Welfare System.* Toronto: James Lorimar & Co, 1983.

While the majority of this book addresses child welfare in Canada, Chapter Four utilizes the ICWA as a concrete example of the United States' efforts to deal with a problem that is equally prevalent in Canada.

Jones, Mack T. "Indian Child Welfare: A Jurisdictional Approach." *Journal of Juvenile Law* 8 (1984): 74-86.

In this article the author addresses the jurisdictional and procedural problems confronted by the tribe and state courts in determining and enforcing child custody adjudications prior to passage of the ICWA. Jones also analyzes the jurisdictional standards expressed in the ICWA to determine whether problems were addressed without raising new and more complex problems. In sum, the author expresses the opinion that the ICWA avoided the problems of the previous system and subsequently gave real authority to tribal courts in adjudicating the issue of child custody.

Katz, Susan. "Justice on the Reservation Wears a Cloak of Confusion." *The Washington Times: Insight* (November 30, 1987): 18-20.

This article addresses the question; Who has jurisdiction over Indian affairs? The answer as provided by Susan Katz is that it depends. Central to the issue is the concept of Indian reservations as independent nations. Writing from this perspective Katz then addresses the issue of the Indian child adoption nightmare. Katz proceeds to give a brief explanation of the unique relationship of Indians and the Federal government and concludes by stating that the jurisdictional question must be settled. However, Katz offers no insight into how this might be accomplished.

Levine, Barry L. "The Indian Child Welfare Act: Federal Law in State Probate Court Proceedings." *Michigan Law Journal* 65 (May 1986): 452-57.

This article discusses the circumstances where application of the ICWA is likely. The author discusses the policy behind the Act, as well as providing an understanding of the Act's provisions. Levine describes resources available to assist in effective representation of Indian clients involved in the ICWA proceedings. While this article merely highlights the most important provisions of the Act, it should provide the ability to identify a child custody proceeding which would correctly be an ICWA case.

Limprecht, Jane. "The Indian Child Welfare Act: Tribal Self-Determination Through Participation in Child Custody Proceedings." *Wisconsin Law Review* 19 (1979): 1202-27.

In this article the author presents the Indian child custody problems prior to the ICWA and the historical background of national policy toward Indian matters. Limprecht describes the Act and the interaction of the Act with state laws. The author then discusses the Act and its interaction in regard to the Wisconsin children's code. In summary, Limprecht highlights areas of possible conflict and states that state officials must determine whether they will impart a restrictive or liberal interpretation of the Federal Act.

Los Angeles Times.
"Navajo Court Takes Up Baby Girl's Fate." (April 15, 1988): Part I, 3.
"Girl in Custody Battle Arrives at Reservation." (April 16, 1988): Part I, 3.
"Judge Delays Ruling on Navajo Baby's Adoption." (April 21, 1988): Part II, 33.
"Navajo Tot May Stay With White Couple." (April 23, 1988): Part II, 28.
"Girl's Guardian Parents Forge Rare Kinship With Navajo Birth Mother" (May 15, 1988): Part I, 3.

These newspaper articles trace the events involved in the custody proceedings of one Indian child. The child was an Indian child as defined by the Act, had reservation residence, and a natural mother who desired adoption of her child by a non-Indian couple. The ultimate outcome resulted in a compromise whereby an "open adoption" was created, giving the non-Indian couple custody of the child, while retaining its tribal ties. This continuing contact between birth parents and the adoptive parents and child is reported as becoming increasingly common, particularly in California. An opposition point of view is made by some adoption specialists who say that continuing contact confuses the child and allows no clear role definition for the child. Other adoption specialist say that this form of continuing contact erases the questions and doubts a child may have in relation to his or her real identity by imparting a greater sense of security.

Marousek, Linda A. "The Indian Child Welfare Act of 1978: Provisions and Policy." *South Dakota Law Review* 25 (Winter 1980): 98-115.

In this article the author examines the major provisions of the ICWA in conjunction with problems of its implementation. Also reviewed are problems and constitutional issues raised

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by critics of the Act. In sum, the author states that the Act is a product of careful Congressional consideration and the implementation problems assumed with the Act can be met by adherence to Congressional policy "to provide for the best interest of the Indian children, tribe, and family."

McMullen, Mary Charlotte. "Preserving the Indian Family." *Children's Legal Rights Journal* 2: 6. (May/June 1981): 36-37.

This article provides the background information into separation of Indian children from the tribal setting and examines the excuses for removal, i.e. alcoholism and failure to recognize the extended family. The article explains the Act, the standards imposed upon state courts, and the procedural protection afforded the parents and the tribe. However, in conclusion however the author states, "it is questionable whether it deserves the title 'Indian Child Welfare Act.' Many of these provisions are directly counter to what child welfare experts recommend and if not amended may result in serious harm to some children."

"Indian Child Welfare Act Amendments Introduced." *Menominee Tribal News* (January 1988).

This article announces the introduction on December 19, 1987, of Senate Bill S. 1976 by Senator Daniel J. Evans. The objective of this amendment is to clarify and expend coverage of the Act with the intent of keeping more Indian families together, increase placement of Indian children with extended families or tribal members, to improve the awarding of grants to tribes and most importantly, to implement monitoring mechanisms to insure compliance with the Act.

Miles, Marilyn Meissner. "Custody Provision of the Indian Child Welfare Act of 1978: The Effect on California Dependency Law." *University of California, Davis Law Review* 12 (1979): 647-50.

This article addresses the uncertainty, in 1979, of the impact of the ICWA on California laws for removal of Indian children and states that a revision of existing California standards and procedures is necessitated. The author identifies California as one of the states where the removal rate of Indian children far exceeds that of non-Indian children, and that this removal intensifies the damaging impact that separation has on the Indian child's family and tribe. The figures quoted are: 90 percent of Indian children subject to adoption are placed in non-Indian homes and one in every 124 Indian children in

California is in foster care compared to one in 337 for non-Indian children. In conclusion, Miles states that California tribes can reassert jurisdiction over child custody matters for the first time since Congress vested jurisdiction to the state in 1953 and that tribes are now granted intervention rights in state court proceedings.

Mississippi Band of Choctaw Indians v. Orrey Curtis Holyfield, No. 87-980, The Supreme Court of Mississippi, 1989.

A landmark decision by the U.S. Supreme Court which came down firmly in favor of wide-ranging tribal authority over Indian children and tribal involvement in child custody decisions affecting Indian children. The case involved twin babies, born out of wedlock to an enrolled member of the Mississippi Band of Choctaw Indians, who was domiciled and resided on the Choctaw Reservation. The natural father of the two children was also a member of the tribe domiciled and residing on the reservations. The mother and father signed consent documents in front of a notary and re-executed that consent in front of the state court judge after the Tribe intervened in the case. Six days after the mother executed her consent, the Holyfield's, non-Indian, filed a petition for adoption in the state court. The court waived the statutory six-month waiting period and entered a decree of adoption 12 days later. Two months later, after learning of the adoption, the Tribe moved in state court to vacate the adoption on the grounds that the Tribe had exclusive jurisdiction over the children. The Mississippi Supreme Court held that if the ICWA applied, it had been complied with. The U. S. Supreme Court held that the twins were "domiciled" on the Tribe's Reservation within the meaning of the ICWA' exclusive tribal jurisdiction provision, and that in certain situations the state courts did not have jurisdiction over child custody proceedings. In *Holyfield,* The Supreme Court applied the full procedural and substantive protections of the ICWA to the two Indian children; where possible, an Indian child should remain in the Indian community.

Moisa, Ray "The Indian Child Welfare Act Comes of Age." *News From Native California* (Berkeley) 2, no. 4:10-11.

In this article, the author addresses the 1987 "Baby Keetso" case which illustrated one of the basic principles of the ICWA. The case centers on the right of a Navajo mother living in the Bay Area to allow a local non-Indian couple to adopt her child. The conflict arose because the ICWA gives tribal courts jurisdiction over certain Indian child custody cases. After reviewing the case, the Navajo tribal court decreed that the child was allowed to remain with the couple according to the mother's wishes, but on condition that the child maintain ties to her Navajo culture throughout her upbringing.

National American Indian Court Judges Association. *Studies For American Indian Court Judges: Handbook For Indian Child Welfare Act*. Washington, D.C. National American Indian Court Judges Association, 1980.

This handbook was designed as an instructive tool for personnel involved with the adoption and custody proceedings of American Indian children. Particularly useful is the breakdown of information into categories of responsibility: State Court, Indian Tribe, Indian Child, Parent, or Custodian, Bureau of Indian Affairs, and General Provisions.

National Indian Health Board, *NIHB Health Reporter* (Washington, D.C.) 4 (April 988): 8.

An amendment to the Indian Child Welfare Act was announced in this publication. Senate Bill S. 1976 was introduced by Senator J. Evans and co-sponsored by seven other senators. Introduced on December 19, 1987, the bill is designed to accomplish the following: clarify and expand coverage under the Act; increase tribal involvement and control; keep families together whenever possible; have fair and expeditious proceedings; implement compliance monitoring mechanisms, and improve the Title II grants process. These recommended amendments were made as a result of hearings conducted in the fall of 1987 to gather data on the success and failures of the present Act.

Native Village of Venetie v. State of Alaska, United States Court of Appeals for the Ninth Circuit, Anchorage, No. 88-3929, D.C. No. CV-F86-75-AJK, Opinion, November 1990.

This case raises the question of whether federal law requires the state of Alaska to accord "full faith and credit" to child-custody determinations made by the tribal courts of native villages. The native village tribal courts in Alaska formalized the adoption of two infants by village members. The State of Alaska refused to give recognition to the native or tribal adoption of the children. The two native villages and the two adopting native women brought suit to prohibit Alaska from refusing to recognize the tribal court adoptions. An important decision which reversed and remanded the district court judgment. The court of appeals held that native villages in Alaska are entitled to "full faith and credit" of child-custody determinations by their tribal courts if it is determined that the villages are the modern-day successor to a historical sovereign band of American Indians.

"Peaches Raps BIA Stance on Adoptions." *Navajo Times* (May 26, 1988): 1.

In this newspaper article Daniel Peaches addresses the proposed amendment to the ICWA which was introduced to Congress in 1987. Peaches states that the Act has given Indian tribes greater responsibilities and suffrage over matters affecting Indian children. While the article addresses the adoption of Indian children, the same effectiveness can be extended to the placement of Indian children in foster homes. Peaches warns of the Secretary of Interior, Donald Hodel and Assistant Secretary of Indian Affairs, Ross Swimmer's statements regarding the proposed amendment. According to Peaches, "implicit in the Secretary's statement is the notion that Indian tribal governments are not capable of rendering justice in these matters, therefore the federal government still knows best what is good for the Indian people."

Null, David. "In re Junious M. (193 Cal. Rptr. 40): The California Application of The Indian Child Welfare Act." *Journal of Juvenile Law* 8 (1984): 74-86.

Junious M. v. Diana L. is the first California court of appeals decision establishing California standards for the implementation of the ICWA. The case is significant in that it established the procedure required when it appeared that a child in a custody hearing is an Indian child. Junious is also important because it illustrates a serious flaw in the ICWA, which consequently is Congress' failure to recognize that a large number of Indians are urbanized, thus few maintain cultural or social ties to a tribe other than a formality of membership. This flaw could result in standards designed to protect childrearing practices used by Indians to require more ordinary child neglect in cases of nominal Indians whose Indian status is hardly more than a convenience.

————. "The Indian Child Welfare Act," *Journal of Juvenile Law* 9 (1985): 391-400.

This article reviews five Indian child custody cases which were adjudicated by the state courts, (primarily Indians not domiciled on reservations) rather than being transferred to tribal courts. Null states that the state courts, in their attempts to balance the interest of the child, the parents, and the tribe, are experiencing difficulty in achieving uniform application of the Act.

Orranta, Rose-Margaret. *The Indian Child Welfare Act of 1978.* San Diego, CA: Lettercraft Publishers, Inc., 1991.

An excellent handbook for ICWA workers. Provides an overview of the purpose, changes, and requirements of the ICWA, an Indian perspective of cultural awareness, a review and summary of *The Holyfield Case*; the most recent landmark ICWA decision; guides on implementing the ICWA; and a guide on "How to Identify an Indian Child." The appendices provide an alphabetical listing of tribes, a listing of ICWA programs funded in 1991, and a United States map identifying federally recognized tribes.

Plantz, Margaret, et. al. "Indian Child Welfare A Status Report," Norman, OK: 1988.

A report on the first systematic national examination of the ICWA. Commissioned by the Administration for Children, Youth, and Families and the BIA, the study examines the prevalence of American Indian children in substitute care and the implementation of the ICWA. Also analyzed are portions of the Adoption Assistance and Child Welfare Act of 1980 as they affect Indian children and families. The study was conducted by CSR, Incorporated and Three Feathers Associates.

"Pure Racism–Hodel on ICWA Amendments." *Indian Notes: Week-in-Review* 12:9 (May 13, 1988): 1.

In this article the contents of a letter written by Interior Secretary Don Hodel to the Senate Select Committee on Indian Affairs and a statement of Ross 0. Swimmer, Assistant Secretary, Indian Affairs before the May 11, 1988 Hearing of The Select Committee of Indian Affairs, on S. 1976, a bill "To Amend the Indian Child Welfare Act and For Other Purposes" are summarized. The essence of both the letter and statement is that both officials are against passage of S. 1976, saying that the bill has multiple flaws. Hodel states that this bill would subject certain Indian children to the claim of jurisdiction of an Indian tribe solely by reason of the children's race and ignores all other aspects of the child's status as a human being. Swimmer's argument is that too little emphasis is placed on the best interests of the Indian child. Swimmer advises that there is no action on S. 1976 until the Office of Indian Affairs has finalized a draft recommendation for ICWA modifications which will be forthcoming in the near future.

"Indian Adoption Stirs Cultural Tug of War." *San Diego Union.* October 18, 1987: A-37.

This newspaper article describes the far-reaching implications of Indian custody cases occurring across the country. Of particular importance are the statistics quoted by Craig Dorsay, a tribal attorney who pointed out that approximately 35 percent of Indian children are removed from their biological parents and that 85 percent of them are placed in non-Indian homes.

Slaughter, Ellen L. *Indian Child Welfare: A Review of the Literature,* Denver: Denver Research Institute, University of Denver, 1976.

This review, conducted in 1976, was undertaken as part of a study of existing child welfare services for Indians. The study involved field surveys on twelve reservations and in four urban areas. Materials were collected on personal visits to agencies in Washington, New York, Albuquerque, and through standard library searches. Conducted prior to the passage of the ICWA in 1978, this review of the literature on the provision of child welfare services to American Indians, was designed to draw together and synthesize all available material on the issues of Indian child welfare that existed in 1976. Contains a 229-entry bibliography.

Stetson, Catherine Baker. "Conflict of Laws: The Plurality of Legal Systems: An Analysis of 25 U.S.C. section 1903, The Indian Child Welfare Act." *American Indian Law Review* 8 (November 1980): 333-60.

In this article, Stetson addresses the problems caused by the multiplicity of legal systems within Indian tribes in comparison with federal and state legal systems. The author argues that the ICWA is a codification of a developing compromise among these various legal systems. Stetson highlights ambiguities which have arisen due to vagueness in definitions which are found throughout the Act. Although specific violations are not identified, Stetson argues that the Act will not necessarily function as a deterrent to states which wish to retain jurisdiction over Indian child custody proceedings.

Three Feather Associates. "ICW: As Status Report," In *Indian Child Welfare Digest Model Practice Approaches,* Norman, OK: 1989.

This article highlights findings from the first systematic examination of the effects of the ICWA. The two-part study consisted of a nationwide mail survey of state, tribal, BIA, and off-reservation Indian-operated child welfare programs. The study presents findings regarding the number and flow of Indian children in substitute care; and a field study of public, tribal, BIA, and off-reservation child welfare programs affecting Indian children in Arizona, Minnesota, Oklahoma, and South Dakota.

Trentadue, Jesse C. and Myra A. DeMontigny. "The Indian Child Welfare Act of 1978: A Practitioner's Perspective." *North Dakota Law Review* 62 (1986): 487-525.

The authors state that in North Dakota "This law goes largely uncomplied with by social agencies, attorneys, and judges." This article attempts to remedy this situation by apprising judges and practitioners of the requirements of the ICWA, especially those regulations and guidelines promulgated by the Department of the Interior. As the title suggests, this article is a practitioner's guide. A thorough and extremely well footnoted article.

Turcotte, Cindy L. "Indian Child Welfare Act–Domicile of An Illegitimate Child–A Step Towards State and Tribal Cooperation in Indian Child Custody Proceedings: Adoption of Baby Child, Pino v. Natural Mother." In *New Mexico Law Review* (Spring 1986): 377-93.

The author addresses ICWA sections which have been interpreted such that an illegitimate Indian child takes the domicile of the natural mother at the time of birth. Turcotte analyses the Adoption of Baby Child, *Pino v. Natural Mother,* in light of that interpretation and discusses in particular the New Mexico court analysis of domicile of an illegitimate child, the ICWA's support of the Pino decision and comments on the implications of Pino and future Indian child welfare matters.

Tuthill, Nancy M. 1983a "Federal and State Indian Child Welfare Regulations," *American Indian Law Newsletter* 16 (1983): 45-53.

"State Implementation of The Indian Child Welfare Act," *American Indian Law Newsletter* 16: 1983b: 10-26.

"Tribal Courts and Tribal Children's and Adoption Codes," *American Indian Law Newsletter* 16: 1983c: 54-62.

"The Indian Child Welfare Act–An Introduction," *American Indian Law Newsletter* 14: 1985: 45-53.

In this series of articles, Nancy Tuthill describes the ICWA beginning with the question; Why did Congress pass the ICWA? Tuthill describes the power of Indian tribes to administer justice arising from powers of self-government and tribal sovereignty and the effect tribal governments have had in the placement of Indian children. The author provides a state by state accounting of the implementation of the ICWA. In sum, the author states that implementation of the ICWA varies greatly, depending primarily upon whether or not federally recognized tribes are found within the geographical boundaries of the state and according to the Indian population of the state. In addition to the study by the Commission on State-Tribal Relations, the author makes reference to another implementation study conducted by the Children's Bureau, Office of Human Development Services, U.S. Department of Health and Human Services. Tuthill recommends that the two studies be read together in order to gain the best perspective of the status of state implementation of the ICWA.

U.S. Congress. 95th, 2d sess, House. Committee on Interior and Insular Affairs. *Establishing Standards for the Placement of Indian Children in Foster or Adoptive Homes, to Prevent the Breakup of Indian Families, and For Other Purpose.* Washington: U.S. Govt. Print. Off., 1978.

Mr. Udell submitted HR 95-1386 to accompany HR 12533 in order to "protect the best interest of Indian children as well as to promote the stability and security of Indian tribes and families by establishing minimum Federal standards for the removal of Indian children from their homes." This legislation provides a section-by-section analysis of the ICWA, history of the ICWA, and also presents dissenting views.

U.S. Congress. House. Committee on Interior and Insular Affairs, "Guidelines For State Courts: Indian Child Custody Proceedings," *Federal Register*, 44: 228 (26 November 1979): 67584-595.

This notice published recommended guidelines for state courts for the implementation of the ICWA. The guidelines published are not regulatory , but represent the Interior Department's interpretations of the Act's provisions. Guidelines are provided in this notice that will, if followed, "help assure that the rights guaranteed by the Act are protected when state courts decide Indian child custody matters."

U.S. Congress. House. Committee on Interior and Insular Affairs, "Indian Child Welfare Act; Grant Fund Distribution Formula," *Federal Register* 44: 234 (5 December 1979): 69732.

This notice sets forth the formula for distribution of funds authorized by the Secretary of the Interior for establishing and operating the Indian child and family services programs. The intent is to ensure that all approved applicants receive a proportionately equitable share of available grant funds.

U.S. Congress, Senate. Select Committee on Indian Affairs. *Indian Child Welfare Act of 1977*. 95th Cong. lst Sess., 4 August 1977.

This Select Committee placed in the record a copy of S. 1214, the Indian Child Welfare Act of 1977, which ultimately became The Indian Child Welfare Act of 1978 (Public Law 95-608). Various interest groups, civil, judicial and religious, both Indian and non-Indian were provided an opportunity to make statements, present documents and petitions in favor of for and against the Act. As a result of this hearing, substantial changes were adopted prior to the presentation and subsequent passage of Public Law 608.

U.S. Congress, Senate, Select Committee on Indian Affairs. *The Indian Child Welfare Act of 1977*. 95th Cong. 1st Sess., 3 November 1977.

In this session, Mr. Abourezk from the Select Committee submitted SR 95-597 to establish standards for the placement of Indian children in foster or adoptive homes, and to prevent the breakup of Indian families. This report established a preference order to apply in concurrence with the placement of Indian children in foster care or adoptive settings. This act also statutorily defined the respective jurisdiction of state and tribal governments in matters related to child placement. This report was a product of concerns expressed over the draft proposal of the ICWA.

U.S. Congress, Senate. *Public Law 95-608. The Indian Child Welfare Act.* 95th Congress., 2d sess. 25 U.S.C. Section 1901 et. seq. 1978.

The ICWA is designed to protect the best interest of Indian children and to promote the stability and security of Indian tribes and families. Public Law 95-608 established by statute, minimum Federal standards for the removal of Indian children from their families, authorized the awarding of grants in the establishment of organizations to effect the program, and established reporting procedures for federal, state, and tribal entities.

U.S. Department of Health, Education, and Welfare. *Indian Child Welfare Act of 1978: Questions and Answers.* Washington, D.C. Office of Human Development Services, 1979.

This publication provides questions and answers which highlights provisions of the Act and its impact on services to Indian children and their families. Written in a comprehensible style, each question and answer is cross-referenced to the applicable section of the Act.

Vanderpan, Mary Lou. "In reference D.L.L. & C.L.L., Minors: Ruling on the Constitutionality of the Indian Child Welfare Act." *South Dakota Law Review* 26 (Winter 1981): 67-78.

This case was the first state supreme court ruling on the constitutionality of the ICWA of 1978. At issue were the states' reserved rights, equal protection guarantees, and federal plenary power over Indians. In a unanimous decision, the South Dakota court concluded that the ICWA is constitutional.

Wamser, Gary. "Child Welfare Under the Indian Child Welfare Act of 1978: A New Mexico Focus." *New Mexico Law Review* 10 (Summer 1980): 413-29.

The author highlights the challenges faced by states and tribes in the implementation of the ICWA. Wamser makes five specific recommendations which he argues would insure the compatibility of the ICWA and state child welfare systems, therefore offering the greatest assurance that the welfare of Indian children will be protected.